LABOUR STANDARDS

An Interjurisdictional Comparison

A Study Prepared for the Government of Ontario

Ministries of

Labour

Industry, Trade and Technology

Treasury and Economics

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Ottawa–Toronto–Kingston–Bangkok

July 1990

Ontario

FOREWORD

In early 1990, Waldie, Brennan and Associates Limited conducted this study for the Government of Ontario. They submitted this report to the Ministry of Labour; Ministry of Industry, Trade and Technology; and Ministry of Treasury and Economics in July, 1990. The views expressed in this report are those of Waldie, Brennan and Associates Limited and not necessarily of the Government of Ontario. The original draft report needed minor revisions and some time was spent on rewriting a few sections based on comments received from staff in other jurisdictions. Consequently, there has been a delay in releasing the report.

It is important to note that the information on labour standards contained here relates to early 1990. It is very likely that by now [illegible] few standards have been changed in some jurisdictions. Interested readers looking for most recent information on a particular standard are advised to verify the current status with the appropriate sources.

In Ontario, for example, two standards have been amended and one introduced since this study was completed in July, 1990. These are as follows:

- The minimum wage has been raised to $6.00 per hour (from $5.40 per hour) effective November 1, 1991.
- On December 20, 1990, Bill 14, a Bill to amend the Employment Standards Act, respecting pregnancy and parental leave, became law. In addition to the 17-week pregnancy leave for mothers, the new law provides each working parent with 18 weeks of unpaid parental leave to care for newborn and newly adopted children.
- Bill 70, a Bill to amend the Employment Standards Act to provide for an Employee Wage Protection Program, became law on October 18, 1991. Under this program, an employee will be entitled to receive from the program up to $5,000 in compensation if an employer fails to pay the employee his or her wages, vacation pay, termination pay and severance pay.

This report (together with its accompanying database) has been prepared for the convenience of users. It is not intended as a substitute for the relevant statutes themselves. Texts of the statutes may be found in the law collection which has been assembled as part of this study.

Ontario Ministry of Labour
December, 1991

93-00885/

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Chapter 1
INTRODUCTION

In most countries, governments set standards to regulate basic terms of employment and working conditions. In some cases, these standards are modified or effectively replaced by collective bargaining or by other employment practices. The aggregate of these standards, however established, is a significant determinant of cost competitiveness among jurisdictions, particularly those with trading relationships. As a result, specific information about standards in different jurisdictions has become an important element in policy planning.

In January 1990, the Ontario Ministries of Labour; Industry, Trade and Technology; and Treasury and Economics awarded a contract for a study of Interjurisdictional Comparisons of Labour Standards and Collective Agreement Provisions. This document is the final report of that study.

TERMS OF REFERENCE

The study involves a comparison of key legislated labour standards and related provisions in collective agreements and relevant preponderant workplace practices in Ontario and 28 other named jurisdictions. The jurisdictions covered are listed in Table 1.1.

The comparison of legislated standards is organized with reference to existing Ontario legislation in nine key subject areas specified in the study's terms of reference. The nine subject areas are covered by the *Employment Standards Act*, the *Occupational Health and Safety Act*, the *Workers' Compensation Act*, the *Labour Relations Act* and five other categories of legislation. The standards included in the study are shown in Table 1.2.

In addition to legislated standards, the study includes situations where de facto standards differing from the legislated minima may have been established either by collective bargaining or by other means. The significance of negotiated standards is established using data on the degree of unionization, and the statistical frequency of various collective agreement features.

Design

The Interjurisdictional Labour Standards Study is designed to provide factual data for use by policy analysts and other researchers. The commentary in this report is intended to assist users of the database, but it does not draw conclusions other than those necessary to interpret the data. It is expected that interested researchers will first read the commentary related to the relevant jurisdiction(s) and then access the data using a computer. They will then have the option of consulting the actual legislation.

It should be noted that the coverage of this study, as defined by the terms of reference, is limited primarily to the private sector. None of the Ontario Acts which apply specifically to public employees was included in the terms of reference. All of the other jurisdictions studied also have separate legislation for public employees. There are hundreds of Acts in the United States alone in this category. These have been noted where they are relevant, and were included in the law collection if they were readily available, but no systematic attempt was made to collect them.

Users are also cautioned against the misleading effect of removing data from its national context. For example, none of the four European countries in the study has any laws equivalent to the *Ontario Labour Relations Act*. There is thus no government determination of eligible and excluded employees, no certification of bargaining agents and no statutory duty to bargain in good faith. It would be wrong, however, to conclude from the absence of such legislation, that Europe is devoid of sanctions which encourage responsible industrial relations behaviour. Careful use of the study will show that such sanctions do indeed exist within other parts of the institutional and statutory frameworks of these countries.

Study Outputs

The outputs of this study have been packaged in two volumes. The first volume is this Report. Chapter 1 is an introduction, including a discussion of the project methodology.

Chapter 2 provides an overview of the differing labour environments which underlie labour standards regulation. It is organized by country, and includes sections on the division of powers between federal governments and the provinces and states in Canada and the U.S.A., respectively.

Chapter 3 describes the contrasting approaches to labour standards. There is a section for each major category of labour standard.

Finally, Chapter 4, which most readers will use for reference, describes in detail the actual labour standards in each country.

The second volume consists of a computer database which contains an item-by-item comparison of each standard. Also included are annotations derived from personal interviews with officials of government, business and labour organizations. Current copies of all relevant Acts and regulations have also been collected. Interested users of the database, and/or of the actual legislation, are advised to consult with the Ministry of Labour Library.

Table 1.1
JURISDICTIONS STUDIED

United States

Federal jurisdiction
California
Georgia
Illinois
Indiana
Kentucky
Massachusetts
Michigan
North Carolina
New York
Ohio
Pennsylvania
Tennessee

Canada

Federal jurisdiction
10 provinces

Europe

France
Sweden
United Kingdom
West Germany

Asia

Japan

Table 1.2
ONTARIO STANDARDS COVERED BY THE STUDY

Employment Standards

Minimum Wage
Hours of Work
Overtime Pay
Vacations
Public Holidays
Pregnancy Leave
Termination
Severance Pay
Unjust Dismissal
Wage Protection

Labour Relations

Right to Bargain
Certification
Bargaining
Right to Strike
Fair Representation
Dispute Resolution

Occupational Health & Safety

Stakeholders
Joint Committees
Right to Refuse and to Stop Unsafe Work
Worker Training
Right to Know
Health and Safety Agency
Consultative Process
Exclusions
Appeals
Fines and Penalties

Pay Equity

Human Rights

Sunday Work

Workers' Compensation

Finance
Assessments
Coverage
Income Replacement
Appeals/Courts
Rehabilitation
Re-employment

Employment Equity

Contracting Out

PROJECT METHODOLOGY

The study methodology involved a combination of telephone interviews, in-depth personal interviews and the physical collection of relevant documents. Information from all these sources has been integrated, analyzed and entered into a computerized database, which along with the final report and supporting documentation, comprises the deliverable output of this study.

The database consists of facts which have been collected by direct reference to the relevant laws in each jurisdiction. This information is supplemented by commentary designed to assist in the interpretation of the factual data.

COLLECTION OF DOCUMENTATION

The project terms of reference call for the physical collection of current copies of all relevant legislation (including imminent amendments), and of collective bargaining and economic statistics. These documents have been gathered through formal requests to appropriate government officials in each jurisdiction, as well as through private sources.

Labour Standards Legislation

The document collection technique involved the assembly of an initial list of relevant legislation by reference to published legislative guides. This included the *Current Industrial Relations Scene* and the *CCH Labour Law Reporter* for North America and the *Encyclopedia of Industrial Relations for Europe*. In the case of Japan, a researcher conducted a preliminary interview with the Labour Counsellor at the Japanese Embassy in Bangkok.

Initial contacts with appropriate government officials were made by telephone, using published government directories. An information package was sent to each of them. Follow-up telephone calls were used to develop a list of government contacts for each piece of legislation. In Europe, assistance in making these contacts was obtained from the International Labour Organization (ILO), arranged by the Canadian representative of the ILO in Ottawa. In Japan, the Ontario Agent General in Tokyo provided considerable help.

In preparation for interviews with government representatives, team members were assigned jurisdictions. The interviewers were provided with an extensive "kit" for each of them. The kits included a list of prearranged interviews, abstracts of the relevant legislation, and a check list of information to be gathered. Copies of the relevant Acts, regulations and associated information were collected as part of the interview process. In some jurisdictions, the printing and distribution of Acts has been privatized, and in these cases, they were purchased from the publishers.

The early interviews revealed that the published legal abstracts were not very good indicators of relevant legislation and regulations. This is especially true for the United States where a considerable body of law remains on the books in spite of having been declared by the courts to be unconstitutional. For example, North Carolina has enacted laws prohibiting collective bargaining. It was also found that there are many more laws and regulations than were expected.

In the U.S. in particular, labour standards are established through a myriad of enabling laws. In California, for example, there is a comprehensive system of health and safety standards, certified under the federal *Occupational Health and Safety Act*. It is known as "Cal-OSHA", but there is no single law. The provisions of Cal-OSHA are spread over several statutes, including the *Labour Code*, the *Administrative Code* and the *Health and Safety Code*. Occupational health and safety standards in West Germany depend upon a similarly diverse collection of separate laws which address themselves to various individual risks, occupations, sectors and materials.

The administration of labour standards in some foreign jurisdictions is spread over an unexpectedly large number of agencies. Many of the officials interviewed seemed surprisingly unaware of the activities of related agencies. As a result, the number of government interviews was much larger than planned. In some U.S. states, as many as eight officials were interviewed. In California, for example, one independent agency, *The Industrial Welfare Commission*, is entirely devoted to determining minimum wages and working hours; but enforcement is through a branch of the Department of Labour, and neither group would discuss the other's activities. In most cases, the researchers learned of additional laws and agencies only after conducting the first-round interviews.

Fortunately, the personal interview technique used in this study was effective in dealing with these contingencies, and interviews were completed with all relevant agencies. Copies of most legislation were collected in person, but some were forwarded separately.

There are a few relevant Acts and regulations which could not be obtained, especially recent amendments and items which are out of print. This was a particular problem in the United States, where some states do not accept responsibility for publishing the law. Private publishers usually fill the gap, but in some cases did not have the material in stock. In these cases, the information included in the database is taken from interviews with government officials.

An apt commentary on the availability of state laws appears in *Illinois Employment Laws and Regulations*, a guide book published by the Illinois Chamber of Commerce. The book's directory of state laws and where to get them includes one section with the title: "Other Laws You Have to Hunt For".

INTERVIEWS

The project terms of reference call for documentary evidence to be supplemented by annotations based on interviews with representatives of government and of employee and employer organizations. Outside Canada, these interviews were conducted in person by senior members of the project team. No personal interviews were conducted in Canada, because labour standards here have been thoroughly studied, and have been documented by both Labour Canada and the Queen's University Industrial Relations Centre. Telephone interviews were conducted with business and labour representatives in Canada, but government interviews proved to be unnecessary.

Personal interviews were usually at least one hour long. Handwritten notes were taken during the interviews and these were expanded immediately afterwards, using lap-top computers. For reasons explained below, many more interviews were completed than had been planned. The original plan was for a minimum of at least 60 interviews, with additions as necessary. In fact, 119 personal interviews were actually completed. Table 1.3 shows the country distribution of these interviews.

Table 1.3
Personal In-depth Interviews

United States	85
Japan	12
Germany	6
Great Britain	5
Sweden	7
France	4
TOTAL	**119**

Telephone Interviews (Canada)

An information package was sent to about 70 Canadian business and labour organizations along with a letter inviting them to comment. Some replied in writing. Follow-up telephone interviews were completed with many of them, including major national business and labour organizations, as well as those in the larger provinces. These interviews, however, were not very useful. With a few notable exceptions, the respondents were generally unwilling to limit themselves to the questions set out in the terms of reference, which asks that legislated standards be compared with actual practice. The respondents' preference was usually to set out their organizations' policies regarding possible amendments, and many of them wanted time to prepare positions. Interestingly, this was not a problem outside Canada. Our Canadian experience may simply reflect the contentious nature of the standards issue in this country.

Because of these problems, systematic attempts to make follow-up calls to all 70 organizations were abandoned. It was felt that the resources saved were better used pursuing additional personal interviews in the other countries. The views of business and labour in Canada are well understood by members of the research team, and in many cases their positions have been set out in writing.

Personal Interviews (Outside Canada)

In the non-Canadian jurisdictions, in-depth personal interviews were completed with representatives of government, business and labour, as well as academic authorities.

Government Interviews

In the case of government officials outside Canada, interview contacts were obtained as part of the initial data collection process, described above.

In each jurisdiction, a larger list of interview subjects was developed through subsequent telephone calls. The objective was to secure interviews with government officials who could speak authoritatively in each area of labour standards. This required several interviews in each jurisdiction.

Interviews, normally at least one hour long, were conducted with all persons on the contact list. In some cases the interviews revealed unexpected information and additional interviews were arranged. When it became apparent that this would be the normal case, interview schedules were adjusted to allow for an additional day in each location, following the scheduled interviews. This added about 10 days to the U.S. portion of the study which was re-allocated by reducing the number of planned Canadian telephone interviews, and by reducing the number of academics interviewed. Those items were considered expendable for reasons explained in the relevant sections of this report.

The interviews included a series of questions, based upon but not limited to, those included in the project terms of reference. In each case, the preliminary list of relevant legislation and regulations which had been assembled by the project team was reviewed for accuracy, and copies of the Acts and regulations were obtained. The major provisions of each act were reviewed, and copies of imminent amendments were acquired where possible. Respondents were also asked about enforcement and sectoral considerations. Finally, the issue of effective replacement of the standard by case law, collective bargaining or other *de facto* standards was discussed. In the United States, much of the discussion concerned the effect of overlapping federal and state jurisdictions.

Business and Labour Interviews

Personal interviews were arranged with senior representatives of business and labour in each jurisdiction. In Europe and Japan, respondents were officials of the main national "umbrella" organizations to which individual trade unions and firms (or sectoral associations of firms) are affiliated. In the United States, most of the business interviewees were officers of state Chambers of Commerce, and most of the labour representatives were officers of state AFL-CIO organizations.

The project plan called for a total of 36 private-sector interviews. In spite of a few last-minute cancellations, 31 interviews were completed. Another three were interviewed by telephone.

Business and labour representatives were asked how the legislated standards compared with actual practice. In many cases they also volunteered other observations about labour standards. These interviews also provided useful cross-checks of other information. In a few cases, names for additional government interviews were obtained from the private sector respondents.

Academic Interviews

Although it was not called for in the terms of reference, the research team had planned to conduct interviews with authoritative academics, such as law school deans or directors of university industrial relations school centres. Six such interviews were scheduled. It was found, however, that in most jurisdictions, published information and government interviews were adequate sources of the needed information. Another consideration is that none of the appropriate European academics is located in the cities visited for the other interviews. In Canada, published sources were considered adequate. The academic interviews were necessary and useful in Japan and in the United States, but the others were cancelled and the time was reallocated to government interviews in Europe and Japan.

TRANSLATION/INTERPRETATION

Some of the source documents obtained are in languages other than English or French. In some cases, translators were hired to extract the data needed for the database, in consultation with members of the project team. The documents themselves were not translated. Personal interviews were conducted in English wherever possible, but some of them were done in other languages, using interpreters. Written communications were delivered in English, French and German.

Chapter 2
NATIONAL FRAMEWORKS FOR POLICY MAKING

One of the interesting findings of this study is the great diversity in legislative approaches to employment standards. All jurisdictions have established legislated standards in a number of areas covered by the study. None of them includes standards in every area covered by the terms of reference. Moreover, the form of labour standards regulation varies greatly among jurisdictions.

An understanding of contrasting approaches to labour standards is enhanced by an appreciation of the basic national framework within which the standards have been developed. This chapter provides an overview of the labour environment in each country, as well as discussion of non-legislated standards.

THE UNITED STATES

The relationship between the federal and state jurisdictions in the United States is complex, and has shifted over the past several decades as court rulings have gradually expanded the federal jurisdiction. Employment standards laws reflect this shift; more recent legislation is more sweeping in its coverage, while older laws enumerate specific areas of coverage.

Laws regulating working conditions were part of the "New Deal", a legislative program for recovery from the Great Depression, implemented by Roosevelt in the early 1930's. The first attempts to impose federal regulation of working conditions were rejected by the Supreme Court on the grounds that they interfered with state jurisdiction.

In 1938, the *Fair Labour Standards Act* became law. This Act established, for the first time, minimum standards for wages, premium pay for overtime, and child labour standards, although non-wage benefits and hours of work are not regulated. The Act was upheld because it was carefully worded to limit its coverage to employers whose operations "affect commerce", a federal responsibility under the Constitution. It also specifically protected state labour standards legislation. At the time, 25 states had their own legislation, which only a year before had been upheld by the Supreme Court. While it has been amended many times, the *Fair Labour Standards Act* continues to overlap with similar state laws, with the most rigorous standard prevailing. Eleven states have higher minimum wages than the federal rate, and a few others have more favourable "tip credits". Thus, some states have entirely pre-empted the federal Act. On the other hand, nine states specifically exempted employers covered by the federal Act.

The *Fair Labour Standards Act* covers all employees engaging in, or producing goods, for "interstate commerce", which has been defined by the courts to cover virtually all of the manufacturing sector. It also covers larger private sector "enterprises" based on their annual revenues, on the grounds that larger employers "affect commerce". It is this "enterprise" standard that allows for coverage of retail and wholesale businesses. Hospital, school and institutional care facility employees are also considered to be employees of an enterprise. Some concern has been expressed by the states that inflation has been eroding their jurisdiction, but on April 1, 1990 the revenue cut-off point was raised to $500,000, from $250,000. Nonetheless, all companies previously covered by the Act continue to be included, under a "grandfather" clause. It is estimated by the U.S. Department of Labour that more than 90 per cent of all non-supervisory employees in the private sector, and overall a total of 73 million workers, are covered by the *Fair Labour Standards Act*. The Act also contains provisions prohibiting wage differentials based on sex between men and women employed in the same establishment on jobs requiring equal skill, effort and responsibility, and performed under similar working conditions. This aspect of the Act is enforced by the Equal Employment Opportunity Commission, while all other aspects of the Act are administered by the department of Labour, Wage and Hour Division.

Also as part of *The New Deal*, the United States government passed laws establishing the right to organize and bargain collectively. The key pieces of legislation were *The National Industry Recovery Act* and the *Wagner Act*, otherwise known as the *National Labour Recovery Act* (NLRA). The latter Act was substantially revised in 1947 by the *Labour Management Relations Act*, also known as the *Taft-Hartley Act*. This amendment extended the right to collective bargaining under the NLRA and provided a regulated environment for organizing and negotiations. This law covers employers in the federal jurisdiction. In contrast with the *Fair Labour Standards Act*, it pre-empts all state law in the jurisdiction (except for right-to-work laws).

Many States have corresponding laws which cover smaller employers, sometimes called "Little Wagner" Acts. None of these laws covers public employees.

The environment created by these laws led to the growth of trade unions in the United States, organized principally along industrial lines. Between 1930 and 1955, the unionization rate grew from 12.7 per cent to 31.8 per cent. The degree of unionization has since fallen, however, particularly in the past decade, and now stands at about 17 per cent. There is great variation among the states. Of the states studied, North Carolina is lowest, with a manufacturing unionization rate of less than five per cent. In Michigan, on the other hand, 54 per cent of the manufacturing work force is unionized.

Notwithstanding relatively early action in regulating collective bargaining and minimum wages, U.S. governments have traditionally been very reluctant to interfere with private contracts concerning other employee benefits. There is no regulation whatsoever in the federal jurisdiction over vacations, holidays, severance or sick pay, meal or rest periods, premium pay for weekend or holidays worked or other economic benefits.

At the State level, there are regulations in place, under various labour standards acts, to protect employees through enforcement of individual (non-union) employment contracts. If an employer promises a specific benefit, it can be forced to provide it through civil action backed by the State. The federal *Fair Labour Standards Act*, however, does not include such regulations. There are no special provisions for wage protection in the case of bankruptcy or receivership, except in Oregon and Maine, the former using Unemployment Insurance funds. Under the federal *Bankruptcy Reform Act* of 1978, the first $2,000 of wages owed to each individual is given the third highest level of priority against assets and employee benefit plans are given fourth highest priority.

There are also a number of civil precedents which have set effective standards. For example, vacations have been held to be earned on a pro-rata basis as work is performed, and not as a reward at the end of a fixed period. In this, as well as many other areas of government intervention in employment markets, the government acts not as a regulator per se, but as an enforcer of employee rights through the civil courts.

The federal government has intervened in the area of employee benefits to the extent of regulating the administration of funded employee benefit plans through the *Employee Retirement Investment Standards Act* (ERISA). This law is similar to the *Ontario Pension Benefits Act* which provides that if an employer promises a pension, or similar deferred payment, it must be funded subject to certain regulations. Employers in the United States have argued, successfully in many cases, that this Act "pre-empts" state regulation over non-wage benefits. State laws in such areas as severance pay have been struck down by the courts as a result. In other cases, State law has been upheld on the grounds that ERISA pre-empts state regulation only in the case of funded benefits. A severance pay law passed by Maine -- the first of its kind in the U.S. -- was recently upheld by the courts. Court battles over this issue occur regularly and any new state regulation of employee benefits is likely to be challenged. The states have asked Congress to clarify this ambiguity of the law, and early action to do so is anticipated.

Health and Safety standards illustrate another variation in the division of powers between the federal and state governments. In this case, federal law pre-empts state law, but health and safety regulation is effectively sub-contracted to states which pass laws meeting federal standards. In return, the federal government shares up to fifty per cent of the cost.

Details of legislated labour standards, adopted by the 12 states included in the study, may be found in the Database. State minimum wage and overtime legislation mirrors the federal law in structure, as does labour relations regulation. In general, however, state labour standards law applies to only a small proportion of the private sector labour force. The single exception is workers compensation which is entirely run by the states.

JAPAN

The industrial relations system of Japan is unusual in a number of respects. The trade unions tend to be organized on an enterprise basis. Enterprise unions, which account for more than 80 per cent of all union members, are combined into industrial federations, which in turn are affiliated with one or both of two national centres, Rengo and Sohyo.

Collective bargaining is conducted by the unions themselves with coordination from the national centres and industrial federations. Collective agreements recognize and incorporate a number of customs which characterize Japanese labour relations. There is a customary "seniority-based wage system", under which wage rates at recruitment are low, but automatically increase with each year of service. It is the usual practice for employees to receive a large proportion of their income in two annual bonuses, paid in December and July. These bonuses are partly based on economic conditions and corporate profitability, but they amount to at least two months' pay, and usually much more. There are also separate allowances for such costs as housing, family size and transportation. Because of these allowances, overall earnings begin to drop between age 50 and 55, and continue to fall until the usual mandatory retirement at age 60 or earlier.

Bargaining agreements are renewed annually, between March and May, in what is known as "Shunto", or "Spring Offensive". Terminology notwithstanding, the industrial relations climate in Japan is relatively stable. Japanese government officials attribute this to high economic growth, low unemployment, stable prices and a highly-developed system of labour-government-management consultation.

The practice of lifetime employment in many Japanese corporations has been well documented, and is reflected in the absence of legislated standards in some areas. The lifetime employment practice is a custom, not enforced by contract or by law, and it is difficult to quantify. The Japan Institute of Labour reports that about 40 per cent of workers 50 to 54 years of age have worked for their present employer for more than 25 years.

Nevertheless, there are many Japanese companies, particularly in the tertiary sector, which do not follow these practices. Lifetime employment is not the custom in smaller enterprises. The unionization rate has also fallen from 35.4 per cent in 1971 to 26.7 per cent in 1989. Women have traditionally been expected to leave work when they have children, and few of them benefit from the lifetime employment custom. For all these reasons, labour standards have become increasingly important in Japan.

A group of labour laws -- which includes the establishment of the Ministry of Labour -- was enacted in 1947. Their passage accompanied the inception of American economic assistance under the Marshall Plan. New provisions included a labour standards law, workers compensation, an employment security law and unemployment insurance.

The *Labour Standards Law* sets out minimum standards for hours of work and other working conditions. In 1987, this law was amended to substantially improve the minimum standards. The exact state of the current regulations is difficult to determine, however, since the new standards are being phased in. The phase-in schedule is complex and varies by size and type of company.

EUROPE

Each of the four European countries in this study has its own approach to some aspects of labour standards law. These differing approaches reflect the development over time of certain political attitudes.

The foundations for these characteristics are often based in laws and concepts which -- while they are not subjects of this study -- nevertheless shape or inspire the labour relations and other employment standards of the country. All four countries, however, share certain common characteristics which contrast strongly with Canadian policies and legislation.

Sweden

Two factors are responsible for Sweden's unique approach to labour standards:

- Fiscal and monetary policies, and key labour standards laws, give top priority to full employment as a national economic and social goal.
- Sweden has a high degree of unionization, between 80 and 90 per cent of the work force. Employers and unions have agreed to a "one workplace - one union" arrangement.

The high rate of unionization is matched by central organizations of employers both at the national and sectoral levels. The result is that most employment issues which are important to the "social partners" can be settled through collective bargaining or bipartite consultation.

In addition, the *Act on Co-determination at Work* makes many workplace managerial decisions subject to consultation or veto by the union. An example is the union right of veto over employer proposals to contract out work normally performed by employees.

The public policy emphasis on full employment is enhanced by a complementary social security system. One of its objectives is to create an environment in which workers welcome, rather than fear, technological change.

A major instrument for this purpose -- though not a subject of this study -- is the Labour Market Board which manages basic unemployment benefits, job placement, training and re-training. It also handles grants and subsidies designed to assist workers in changing occupations and/or locations. The Board also finances employer wage subsidies to prevent short-term layoffs.

The central organizations representing both employers and workers are much stronger than their counterparts elsewhere in Europe and North America. Perhaps as a result, both appear confident in their ability to produce mutually acceptable results, or compromises, through bipartite and tripartite consultation. They are therefore less dependent on legislated standards.

Great Britain

The British government is much less interventionist than its counterparts in the other three countries. Its current policy is to place considerable reliance on markets to determine national economic priorities, to build Britain's strength as an exporter, and to create a labour environment which contributes to these objectives.

The rate of unionization of the British work force has been estimated at between 25 and 40 per cent. The labour movement opposes most of the government's goals, and this has produced a number of confrontations.

The central organizations of unions and employers in Britain are well-organized and effective, but have not been delegated as many powers as their counterparts in Sweden and Germany. In any large unionized workplace, different groups of workers may be represented by a number of different unions, some holding collective agreements with the employer, and some not. The duration of collective agreements is not fixed by law, and an employer may concurrently hold separate agreements on different subjects with the same union. Agreements are, therefore, subject to abrogation and renegotiation at any time by either party. In practical terms, such occurrences are limited by the changing bargaining environment.

Britain's labour standards laws have not traditionally entered the areas of wages, hours of work and overtime, public holidays or vacations. Recent legislation has focused on industrial relations, including the accountability of unions to their members, restrictions on partisan political activity by unions, and the imposition of mandatory procedures for strike votes. The government has also ruled that local authorities and other public agencies cannot include contract compliance stipulations (i.e. fair labour standards rules) in the tendering of public contracts.

France

Four features characterize the French employment scene:

- Unions are more vulnerable to civil suits for damages than in other countries.
- Employer collection of union dues is prohibited, as is compulsory union membership or dues obligations of any kind.
- Union central bodies have proliferated.
- The law creates works councils, elected by the employees in the workplace.

The first two items are not the results of any recent "right-to-work" campaign, but have been handed down from the revolutionary period of the 18th century. The original basis for the legislation was the revolution's denial of privileges or special exemptions to any individual or group. Present day French unions have, in effect, inherited this status from the craftsmen's guilds of 200 years ago.

Most French workers have their choice of at least five different unions purporting to represent their occupational or industrial interests. An employer may have to deal with all of them on individual workplace issues, but will bargain only with those which have the apparent strength to mount an effective challenge.

The major union confederations are themselves classified as unions. They often differ significantly from each other in bargaining policy and almost always differ in their overall political attitudes.

As a consequence of all these factors, "certification" in France has nothing to do with the allocation of bargaining rights. A government body certifies which unions meet standards of longevity, membership and other criteria which determine whether they should be represented on certain tripartite or multipartite agencies. This body also determines whether they should be permitted to participate with other unions in collective bargaining, or in "accessions" to agreements already reached by other unions and employers. This certification may relate to the national, regional or local level.

In many firms, the works councils, which exist in separate workplaces, also appoint higher level councils to deal with the corporation at regional and national levels of concern. These additional structures are provided for in the Labour Code. Works council elections may produce a body dominated by a single union, but a more frequent result is a council whose elected representatives are made up of candidates from more than one union, and some individuals who do not represent any union. Works councils do not participate in collective bargaining, but do play a strong role in the enforcement of collective agreements and in dealings with the employer about work force reductions and dismissals.

West Germany

The structure of German labour relations is similar to that of Sweden, in that collective bargaining is led by a relatively small number of industrial unions linked together in strong central federations, who bargain with equal well-organized sectoral associations of employers. The employer associations are also united in a strong national organization.

German law, like that of France, permits the establishment of works councils in each workplace, with functions quite similar to those of the French works councils. In practice, however, because of the "one union-one industry" rule observed by German employers and unions, the membership of the works councils is likely to be dominated by the union which represents that group of workers in collective bargaining.

German law requires employers to involve workers in decisions that affect the work environment, both at the workplace and at higher levels. The relevant laws aim to achieve this goal by two means:

- mandatory employer consultation with and reports to elected works councils; and
- through "mitbestimmung" or co-determination laws. Co-determination involves representation of employees on the "supervisory boards" of large companies; (supervisory boards are bodies created by law to oversee some aspects of the functions performed by "managing boards", which carry on the day-to-day management of corporate affairs).

In the former case, the employer must report in advance on all intended dismissals (both layoffs and individual firings), changes in work design or technology and management personnel. The works council, which in most cases will be dominated by a single industrial union, has no power to veto any of these management intentions, but it does have effective power to delay the proposed action and to bring it before an internal conciliation committee, chaired by an impartial outsider, for a decision.

At time of writing, Germany re-unification appears imminent. It was not possible, however, to predict any implications for labour standards on the basis of the interviews conducted for this study.

COMMON CHARACTERISTICS

While there are unique factors which distinguish the labour standards of France, West Germany, Sweden and Britain, there are two important characteristics which are common not only to those four countries but to all of Western Europe.

Preservation of the Employment Relationship

The outstanding common characteristic of the European countries is the extent to which the law intervenes to protect and preserve the employment relationship. This is based on the concept that there is an implied contract of employment with every individual, even though the terms of that agreement may be set by collective means. Breaks in employment suspend, but do not terminate, that relationship, and seniority and the rights that go with it continue to accumulate. The most interventionist laws of this kind are those of France and Sweden. The least interventionist are those of Great Britain.

Emphasis on Occupational Health and Safety

All four countries have broadened their activities in the area of workplace health and safety within the last decade. But the legislative approach is much different from that of Ontario.

The European systems all rely heavily on activity generated from the top down. The individual worker's "right-to-know" about workplace hazards is not specifically enunciated. Experts, in the form of industrial physicians or hygienists, employer representatives and union safety delegates, are key to this approach. The law provides for them to receive information, and to take responsibility for the protection of workers.

Both these features are discussed within a broader context in a later section of this Report.

THE EUROPEAN COMMUNITY

The development of labour standards for the remainder of this decade will be determined increasingly by decisions made by the European Community (EC). The major objective of the EC is to create a single market of the 12 member-countries in which goods, services, capital and labour move freely across national borders.

It has been recognized that increased harmonization of social standards will be necessary to facilitate the mobility of economic factors. There have been few results in this area so far, and there are wide differences of opinion among member countries about some issues. Nevertheless, there has been agreement on a Social Charter based on 12 main principles. The Charter was approved by the EC in November 1989.

The Social Charter in Brief

- Freedom of movement.
- Fair remuneration for all employees.
- An overall improvement in workers' conditions.
- Social protection: adequate standards of social security for all citizens.
- Freedom of association and collective bargaining.
- Vocational Training: the opportunity for training throughout working life, including language training.
- Equal treatment for men and women.
- Workers' rights to information, consultation and participation, particularly in transnational firms.
- Workplace health and safety.
- Protection of children and young people in employment.
- Adequate resources for retired people.
- Integration and assistance for disabled persons.

Action to give practical effect to these principles has not, thus far, been rapid. However, the European Commission, the civil service of the EC, has recently quickened the pace, producing a number of draft community-wide standards as part of an "action programme". It is anticipated that the action programme will be broadened to include proposals for common standards in:

- Working Conditions

    - working time;
    - pay;
    - employment contracts (employer/employee obligations and rights);
    - part-time and temporary work; and
    - fair labour clauses in public contracts.

- Occupational Health and Safety

- Training

    - right to training; and
    - EC wide recognition of qualifications.

- Worker Participation

    - statute to define rules for "European" companies;
    - worker rights in European companies;
    - worker consultation and information rights.

- Equal Opportunities

    - women workers: parental leave, equality, child care leave;
    - rights for disabled workers;
    - rights of foreign and minority workers; and
    - protection for young workers.

These items loom larger in importance as the goal of a "single market" by the end of 1992 approaches.

The EC has already been credited with a major change in the laws of one member nation on the basis of a treaty which predates the Social Charter. In 1983, a decision of the European Court of Justice required the government of Great Britain to refine its pay equity law to introduce the principle of equal pay for work of equal value.

CANADA

The *Constitution Act*, 1867, gives far move legislative authority to the ten Canadian provinces than is granted to the American states. The provincial authority to enact labour law derives from the "property and civil rights" section of the Act. Judicial interpretation has deemed that labour laws impose restrictions on the employment contract, and the right to enter contracts is a civil right. The federal jurisdiction has authority to regulate in areas of a national, international or interprovincial nature. As well, Parliament has determined that the federal jurisdiction may regulate works within a province which are "for the general advantage of Canada or of two or more provinces."

As a result of the above constitutional determination of jurisdiction, the *Canada Labour Code*, which is the principal vehicle for federal labour standards, applies to the following:

- railways, bus operations, trucking, pipelines, ferries, tunnels, bridges, canals, and communication systems;
- shipping and longshoring services;
- air transport, aircraft and airports;
- radio and television broadcasting;
- banks;
- operations of general advantage such as flour, feed and seed cleaning mills, feed warehouses, grain elevators; and uranium mining and processing; and
- federal Crown corporations engaged in undertakings that fall under section 91 of the *Constitution Act*.

All other employers, fall under provincial jurisdiction, which includes about 90 per cent of the labour force. The provinces have enacted a variety of labour standards laws, as well as Acts and regulations governing collective bargaining.

The evolution of collective bargaining in Canada closely followed that of the U.S., with many American unions establishing Canadian sections in the 1940s and 50s. Unlike the U.S., however, the proportion of employees belonging to unions in Canada continued to grow until the 1980s. It has since fallen off slightly, and now stands at about 37 per cent, down from a high of 40 per cent in 1983.

The number of employees covered by collective agreements, however, is much higher. Under the system of dues collection prevalent in Canada, union security clauses in collective agreements require all employees in a bargaining unit to pay dues, whether or not they join the union. This is known as the "Rand Formula". The right to collect dues from non-members is balanced by a duty to fairly represent all employees in the bargaining unit, whether or not they are members. There is no equivalent system in Europe or Japan. The so-called "dues shop" is much less prevalent in the U.S., particularly since it is prohibited by law in some states. The percentage of employees covered by collective agreements in Canada has been estimated for 1985 at 57 per cent. The corresponding figure for Ontario is 50 per cent.

Although the federal and provincial governments separately legislate many labour standards for their own jurisdictions, there are some areas of overlap. Workers' Compensation is entirely within the provincial jurisdiction, and employees covered by the *Canada Labour Code* are covered by provincial programs. In the area of parental leave, provincial legislation is supplemented by the federal *Unemployment Insurance Act* which provides up to 15 weeks of unemployment insurance benefits for maternity, paternity and adoption leave.

In addition, the federal *Canadian Charter of Rights and Freedoms* applies to the legislature and government of each province in respect of matters within the authority of the province. The Charter has been used to challenge existing labour law, generally on the basis of the right to freedom of association and expression, in areas such as the right to bargain collectively, the right to strike, closed union shops, Rand Formula dues deductions, the right to pursue a common law remedy to a grievance and the exclusivity principle of representation. In more recent years, the rights to equality clause of the Charter has been used in age discrimination cases to challenge mandatory retirement legislation, with mixed results.

NON-LEGISLATED STANDARDS

One of the objectives of this study is to identify standards which may have been superseded by collective bargaining, the market or other form of standard. The greatest scope for the establishment of such non-legislated standards is in the area of basic employment standards such as premium pay and paid time away from work.

Some standards are clearly irrelevant, because they are so far behind common practice or so poorly enforced that they do not affect a significant number of people. The $2.00 minimum wage in Indiana is an example. There are several other possibilities:

- The legislated standard exists and constitutes a real constraint on private behaviour in a substantial number of workplaces. Health and Safety is an example.
- The legislated standard exists and has some effect, but the number of affected workplaces is small, because the market or collective bargaining sets higher standards. Nonetheless, the standard is important to the people it affects. Minimum wages in most jurisdictions fall into this category.
- No legislated standard exists, but the market or collective bargaining has established some form of standard. The workplace observance of public holidays is a significant example in this category.

Standards Set By Collective Bargaining

Sweden is the only country where collective agreements could be considered to have superseded most labour standards. Indeed, the unionization rate is so high -- approaching 90 per cent of eligible workers -- that the government has not considered legislated standards necessary in many areas.

The unionization rate in the other countries studied ranges from 17 per cent in the U.S. to 48 per cent in Great Britain. (All numbers are for 1987 and are taken from *The Current Industrial Relations Scene in Canada*). The unionization rate has fallen over the last decade in some jurisdictions. Another consideration is that the overall unionization rate includes public employees. They are highly unionized in all of the jurisdictions studied. The private sector unionization rate, in most cases, is much lower. It is also true that women are less unionized than men. In Ontario, for 1986, the unionization rates were 42.8 per cent for men and 31.3 per cent for women.

It follows that the standards set by collective bargaining may apply to a minority of paid workers, and to an especially small proportion of private sector workers and women. The old rule of thumb was that standards achieved in collective bargaining set patterns for other workers. This has become decreasingly true in all jurisdictions studied. They have all experienced significant growth in the low-skilled, low-wage non-union occupations -- particularly in the service sector. In almost every jurisdiction, business and labour representatives reported that significant numbers of workers were affected by all the legislated standards even though the majority of workers enjoyed better conditions due to the direct or indirect effects of collective bargaining.

Market-Determined Standards

Standards created by the market, or by custom, are difficult to assess. In general, they are not really standards at all because they do not apply to everyone. A good example of this difficulty is public holidays. None of the foreign jurisdictions studied required by law that employees be given paid time off for specific holidays, or that they be paid at premium rates if they work on the day. The sole exception is May Day in France, during which all but essential services are shut down, and workers must be paid.

Notwithstanding the lack of regulation, public holidays are determined by custom and in most cases sanctioned by the state. In the United States, for example, none of those interviewed considered the lack of a holiday standard to be a serious problem, since most workers expect to get those days off. Yet they all acknowledged that restaurant and retail employees would, in many cases, not get time off and would not be paid at premium rates.

In some other jurisdictions, the customary number of holidays exceeds the legislated standard, but it is not possible to quantify the customary standard, because there are so many variations. In Japan, for example, holiday practices vary widely, especially in the case of religious holidays, and there is no good information about the number of holidays actually observed in workplaces.

For all these reasons, this study was not able to adequately document the existence of any standard set through collective bargaining or by the market. It was, however, possible to determine that particular legislated standards are of little or no significance. These cases are highlighted in the discussion which follows in Chapter 3, and explained in some greater detail in the review of each standard which is contained in Chapter 4. Readers wishing more precise documentation are referred to the Database and the law collection.

Chapter 3
CONTRASTS IN LEGISLATIVE APPROACH

The sections which follow describe significant differences in the approaches to labour standards law which were observed by the study across the various jurisdictions. The study did not attempt to measure the relative effectiveness of these different approaches, although it did register assessments where offered by interviewees.

The descriptions in this section are intended only to highlight significant contrasts among various approaches to labour standards law. A more complete comparison may be found in Chapter 4, and additional detail is provided in the Database.

PROCESS AND PRINCIPLE

European and Japanese legislators appear less concerned with determining process than their North American counterparts.

In general, the more complex of the labour standards laws in these jurisdictions enunciate the principles to be applied and leave the details of their application to the collective bargaining partners or to employers. Where problems are encountered, they may be dealt with by specific regulations or, in the case of Great Britain, by non-mandatory codes of practice.

An example of the difference in approach is Occupational Health and Safety. This area of law in Ontario, and generally throughout Canada, provides many examples of processes which are required by law or regulation to be carried out by employers and other stakeholders. A good example is the procedures laid down in the Designated Substance Regulations of Ontario's *Occupational Health and Safety Act* and the provisions governing the workers' right to refuse unsafe work and the right to know, the latter as contained in the pan-Canadian Workplace Hazardous Materials Information System (WHMIS).

Counterpart laws in Japan and Europe describe the required attributes of a safe workplace and oblige the employer to meet these general standards. The employer and the union or works council, as the case may be, are relied upon to negotiate most of the procedures necessary for attainment of the law's objectives.

In Sweden, for example, the employers' central organization and the labour movement have negotiated a national Working Environment Agreement which contains the detailed procedures and practices to be observed at the workplace.

The U.S. law, while it includes fewer worker rights than its Canadian counterparts, is similar to Canadian practice with respect to the importance of mandated procedures.

Another example is pay equity. Ontario's legislation has no counterpart in any of the other countries. It lays down a specific process which is intended to achieve the aims of the law. All the other countries, except France, have stated the principle of non-discrimination on the basis of sex in more or less detail in the law, and have adopted what are basically complaint-based systems of enforcement.

THE EMPLOYMENT RELATIONSHIP

Japan, by tradition, and the four European countries, by legislation, assign great importance to protecting the worker's status as an employee. This may be observed in a number of employment laws and practices, but is especially evident in the laws governing termination of employment.

In Ontario, the relevant statutes set out schedules of termination notice (or pay in lieu thereof) for individual terminations of employment. They also provide for special periods of notice in cases of group terminations, as defined, and for advance notification to government in such instances.

The laws of the four European countries contain parallel provisions, but in addition, require that the employer report to and consult with employee representatives prior to both individual and group dismissals (except summary dismissals for serious fault). In all four countries, the individual dismissed worker is entitled to a written explanation of the reason for dismissal, and a union or works council representing the employees must be consulted by the employer prior to a group termination. The employer must make genuine attempts to provide alternate employment within the firm or elsewhere. The employer's report, provided to the works council or union, must include the names, occupations and dismissal dates of those slated to lose their jobs and an up-to-date account of the numbers employed in the firm and/or workplace affected, together with information about alternative solutions canvassed by the employer, such as adoption of a short work week, demotion to lower-paid jobs, absorption into another function or branch of the enterprise and employment with a different employer in the region or sector. The onus is on the employer to demonstrate that there are objective reasons for any dismissal.

Under Swedish law, a worker who contests a dismissal, other than summary dismissal, is entitled to continue in employment until the case is finally determined.

There is no equivalent statutory protection in Japan, although, by custom and tradition, the layoff of workers is regarded as an unfair employment practice. Economic slowdowns are accommodated through income reductions.

The United States provides a striking contrast. There are no legislated standards on individual terminations in those states included in the study. Federal law, and that of some states requires government notification of group terminations, but none requires advance consultation with or reporting to employee representatives. In fact, many of the states operate under the principle of "employment-at-will", which means that any worker can be dismissed at any time for any otherwise legal reason.

PUBLIC HOLIDAYS AND VACATIONS

Canadian jurisdictions are the only ones in the study in which employment standards laws establish more than one paid public holiday.

There are no standards for public holidays in the relevant U.S., British, Swedish or Japanese statutes. All rely upon custom, collective bargaining or other arrangements for the provision of paid holidays.

In France, eleven national public holidays are listed in the Labour Code, but only May Day involves any statutory rules. Only essential service employees work that day, and they are entitled by law to double time. Similarly, in Germany, June 17 is the only declared national holiday under labour standards legislation.

Neither country forces workplaces to close on other public holidays, but the employment laws of both require that if the workplace is closed, workers must be paid.

Sweden, France and Germany place a higher value on paid time off for vacations, than do the other jurisdictions.

Britain has no statutory vacation standard, and neither the federal government nor the states in the U.S. have enacted paid vacation standards.

The basic statutory provisions in Canada establish two weeks of paid vacation, which is the standard in Ontario. Four other Canadian jurisdictions add a third week after attainment of a minimum continuous service level.

Japan provides a basic 10 days, to which an additional paid day per year is added for service beyond 2 years until a maximum of 20 days is reached.

In Sweden, France and Germany, by comparison, basic levels of paid vacation are quite high. Swedish law provides a minimum of 27 working days.

France credits paid vacation at 2.5 days per month worked (credit for time worked includes vacations, holidays and other authorized leaves) up to a maximum of 30 days, or six weeks, per year.

The German minimum standard is 18 days paid vacation per year, but statistics reveal that the actual standard is much higher. Ninety-eight per cent of all workers enjoy at least four weeks a year, and approximately two-thirds of workers covered by collective agreements have at least 36 days of paid vacation each year.

MINIMUM WAGES

All but three of the jurisdictions in the study set a general statutory minimum wage, some with variations for different occupations or sectors. The three exceptions are Sweden, Britain and Germany, where collective bargaining is relied upon to determine wage and salary patterns.

Each of the thirteen Canadian governments (including the two territories) sets minimum wages for its own labour jurisdiction. In the United States, state and federal minimum wages have overlapping application. Where overlap occurs, the higher of the two rates prevails.

Japan decrees minimum wages each year. They take the form of a general minimum for each prefecture and separate minimums for some industrial sectors within a prefecture. The higher of the two minimums prevails.

France is a significant exception to the European pattern. It has adopted a permanent mechanism for setting the minimum wage, based on changes both in consumer prices and in living standards. The French law is, in fact, unique among the countries included in the study.

HOURS OF WORK AND OVERTIME

All jurisdictions, except Britain and some U.S. States, have established standard weekly and/or daily working hours and most have adopted minimum overtime premium pay rules. Many, like Ontario, have also adopted maximum daily or weekly working hours standards.

In addition to these standards, Sweden, France and Germany also place limits on the number of overtime hours an individual employee may work. In France, a maximum aggregate annual overtime limit is set by collective bargaining and applied to others by regulatory decree.

The statutory annual limit in Sweden is 200 hours. It is broken down into monthly maximums. These limits may be varied, upward or downward, by collective agreements.

The German overtime limit is 2 hours per day, beyond the statutory maximum working hours, for any 30 days in a year (60 hours).

WORKERS' COMPENSATION

Workers' compensation systems apply in all the jurisdictions covered by the study. In every case, except Great Britain, they are completely financed by employers. The systems all perform similar functions, but there are four different structural models.

The Canadian Model: Separate provincial government agencies, assess and collect funds, set income replacement levels, administer claims and appeals and have responsibility for rehabilitation.

Japanese "Workmen's Accident Insurance Compensation" follows the Canadian model.

The U.S. Model: As in Canada, there are separate schemes in each state, but the basic structure differs significantly. In the U.S., government supervises the administration and plays a major role in setting assessment rates, defining income replacement benefits and settling appeals, but the collection of funds and payment of benefits is contracted to private insurance companies. Some large private employers are permitted to self-insure. Other government agencies are usually responsible for the rehabilitation of injured workers.

The General European Model: Britain, Sweden and France all operate workers' compensation plans as parts of national social insurance schemes. There is some overlapping of benefits. For example, all three countries provide for short-term income replacement benefits -- whatever the cause of the disability -- to be paid by the common national insurance scheme, or directly by employers, during an initial period of absence from work. Thereafter, occupational disabilities and survivor benefits are paid under a separate work disability part of the national scheme.

The German Model: Workers' compensation is operated in the German private sector by 35 separate non-profit sectoral workers' compensation funds known popularly as "BGs", for Bundesgenossenschaften. The BGs are managed by bi-partite, employer-union boards, and perform all the functions handled by their Ontario counterparts, except that they play a more limited role in rehabilitation. The law requires that every employer adhere to the appropriate BG for his sector. An even larger number of BGs operates workers' compensation for public employees.

UNION REPRESENTATION

The United States and Canada are unique among the jurisdictions covered by the study.

Neither Japan nor any of the four European countries have legislated any government involvement in the selection of bargaining agents by workers. Thus, there are no certification procedures, no laws concerned with exclusions from bargaining rights, or with bargaining in good faith or fair representation. State involvement in the bargaining process is generally at the request of the parties, or in emergency situations.

Only Germany and Canada produce regular statistics derived from the analysis of collective agreements. In Germany, the parties are required to furnish copies of collective agreements to the Ministry of Labour and Social Affairs. In Canada, agreements are accumulated as a result of government's close involvement in the labour relations process. The United States Department of Labour discontinued its collective agreement series several years ago. Limited state data are available, but not in a form which will allow systematic comparisons between states.

Chapter 4
LABOUR STANDARDS

This Chapter compares labour standards in the 7 study countries by labour standard category. The categories are arranged in a manner similar to the terms of reference:

1. Minimum Wages, Hours of Work and Overtime
2. Paid Vacations and Holidays
3. Pregnancy Leave
4. Termination, Severance Pay, Unjust Dismissal and Wage Protection
5. Occupational Health and Safety
6. Workers' Compensation
7. Labour Relations
8. Pay Equity
9. Employment Equity and Human Rights
10. Contracting Out
11. Sunday Work

Each section begins with a description of the statutory standard with added commentary on relevant non-legislated standards.

Comparisons for the United States include federal standards, together with general comments about state practices where appropriate. Comparisons for Canada include both Ontario and the federal jurisdiction; as well as general comments, where appropriate, about standards in the other provinces.

Users who require more specific detail about any of the standards described, or about standards in other Canadian provinces or the 12 states included in the study, are directed to the Database.

Unless otherwise noted, all labour standards laws of France are contained in the single-volume *Labour Code*.

All foreign currency quotations have been converted to Canadian dollars at the prevailing rates for June, 1990. The actual foreign amounts are also shown to allow more precise conversion by the user.

Section 1
MINIMUM WAGES, HOURS OF WORK AND OVERTIME

THE UNITED STATES

Minimum Wage: The federal minimum wage is set under the authority of the *Fair Labour Standards Act*. It is currently U.S.$3.80 per hour and is scheduled to increase to $4.25 (about $Can 4.98) April 1, 1991.

Under the definition of federal and state jurisdictions, which is discussed in Chapter 2, the federal minimum wage and overtime standards apply to all workers affected by interstate commerce. Firms with annual revenue of $500,000 or more are deemed to be in the federal jurisdiction. Thus, state minimum wages affect only employees of very small businesses.

Eleven states have higher minimum wages than the federal standard, and a few others have more favourable "tip credits". Nine states specifically exempt employers covered by the federal standard.

State minimums in the 12 states included in this study vary from a current low of $2.00 ($Can 2.35) in Indiana to a high of $4.25 ($Can 4.98) in California. Some states link the state minimum to the federal standard, but there are sometimes lags or leads in effective dates. The state of Tennessee has not adopted any minimum wage standard.

Hours of Work and Overtime: A standard work week of 40 hours is set under the *Fair Labour Standards Act*. The standard is an overtime trigger only. It does not constitute a right for workers to refuse longer weekly hours.

This weekly figure is generally reflected in state standards as well, although California sets different standards for individual sectors and has added an 8-hour daily overtime trigger in addition to the 40-hour weekly standard for most sectors. North Carolina's overtime trigger is set at 45 hours per week.

Overtime pay is normally at the rate of 1.5 times the standard wage rate.

Standards for maximum working hours are non-existent in the states covered by the study, except for special standards applied to children.

JAPAN

Minimum Wage: Minimum wages are set by the *Minimum Wages Law*. There are separate rates for each of 47 "Prefectures". The rate in Tokyo, Kanagawa and Osaka (the highest) is Y4,160 per day or about $Can 4.07 per hour. The lowest rate, for Nagasaki, Miyazaki and Kagoshima is about $3.48. The weighted average for Japan is about $3.85. There are separate rates for each industry and the higher of industry and regional rates applies. There is a complex system in place for revising the minimums. According to the Japan Institute of Labour, the minimum wages are about 45 per cent of average "regular" pay in each industry.

As in other jurisdictions, the significance of these standards varies by region, industry, and size of company. Government, employer and union observers hold the opinion that the statutory minimums are not significant in the larger centres or for larger employers, who easily exceed the standards. The standards are not considered as constraining in the manufacturing industry. The standards are effective for smaller employers, particularly in the service sector. Wholesale and retail trade were cited as frequent violators. Enforcement is vigorous with inspectors visiting workplaces to look for infringements.

Hours of Work and Overtime: A "regular" work day and work week of 8 hours and 40 hours, respectively, is set by the *Labour Standards Law*.

This represents a reduction from a 48-hour work week by a 1987 amendment. However, current regulations allow a 46-hour week, and some employers have been given permission to retain 48 hours until March 31, 1992. This standard is an overtime trigger only and not a maximum. Overtime pay is normally 1.25 times the standard wage rate.

For female workers in most industries, the law prohibits overtime of more than 6 hours per week or 150 hours per year. However, changes to the *Labour Standards Law* have created an exemption from these restrictions for female supervisors and managers. Women managers have also been exempted, along with medical personnel and broadcast employees, from the general prohibition against females working between the hours of 10:00 PM and 5:00 AM.

The relationship between working conditions and firm size is quite strong. According to statistics obtained from the Japan External Trade Organization (JETRO), 68.2 per cent of companies with 1,000 or more employees had already implemented a work week of 40 hours (or lower) when the law was amended in 1987. Only 12.8 per cent of firms with 30 to 99 employees had done so. In the manufacturing industry, the total of working hours for 1986 was 2,150 hours, and of this, 212 hours were paid at overtime rates.

FRANCE

Minimum Wage: The general minimum wage in France, (or "Minimum Growth Wage") is currently set at F31.50, or about $Can 6.61 per hour, about 66 per cent of the average industrial wage. There is a formal system for calculating this standard, based on the cost of living, annual growth in purchasing power, and special adjustments. The minimum wage is reviewed annually. It is unlawful for collective agreements to fix wages by reference to the Minimum Growth Wage. According to the Ministry of Labour, about 1 million of France's 22 million workers are affected by the minimum wage.

Hours of Work and Overtime: Maximum weekly hours are fixed at 39 per week under the *Act to institute the 40-hour week in industrial and commercial establishments and lay down working hours in underground mines*; 1936 and later amendments. Total weekly hours may not exceed 48 in one week, or 46 on average over any 12 consecutive weeks.

Overtime is at the rate of 125 per cent for the first 8 hours per week and 150 per cent thereafter. There is also a provision for compensatory rest time of 20 per cent of all hours worked in excess of 42 per week. If annual overtime exceeds 130 hours, more stringent rest time provisions become operative. Maximum annual limits on overtime are reached in collective agreements and then applied more broadly by decree. Government data on total hours worked suggest that little overtime is actually worked.

GREAT BRITAIN

Minimum Wage: Great Britain has no legislated general minimum wage.

Collective bargaining and its spin-off effects appear to influence the wages paid to a large part of the British workforce, but wages and overtime rates are set by *Wages Council* for about 2.5 million British workers in 26 low-wage industries such as catering, hairdressing and retail stores. In many of these industries, the rate of unionization is also quite low. A recent amendment to the *Wages Act* abolished the wages councils, but the government appears to have indefinitely suspended its application and the work of the wages councils has continued. Each wages council is comprised of an impartial chairperson and representatives of business and labour. Council decisions are given the force of a decree in all establishments in the sector concerned. Minimum wages currently vary between approximately L2.20 ($4.40) per hour and L2.70 ($5.41).

Hours of Work and Overtime: There is no general statutory standard covering hours of work or overtime.

In those sectors governed by Wages Councils, overtime premiums may be required, but the conditions vary between sectors. Overtime is normally required after 39 or 40 hours of work in a week.

SWEDEN

Minimum Wage: There is no minimum wage in Sweden.

This reflects the strong influence of collective bargaining in a country whose rate of unionization is between 80 and 90 percent. Collective bargaining between the "social partners", unions and employers, effectively sets wage patterns for union and non-union workplaces alike on a sector by sector basis.

Hours of Work and Overtime: Maximum hours under the *Working Hours Act* is 40 per week, and overtime is generally limited to 200 hours per year. There is no standard for overtime pay, which along with wages is determined by the "social partners".

WEST GERMANY

Minimum Wage: West Germany has no legislated general minimum wage.

Collective agreements between sectoral unions and sectoral associations of employers appear to effectively determine wages for union and non-union workplaces. Within sectors, wage agreements normally reflect regional differences in living standards. Wages are generally higher in the south than in the north of the country, even within strongly organized industrial sectors.

Hours of Work and Overtime: Under the *Working Hours Code*, normal hours are limited to 8 per day and 48 per week. There is a right to refuse overtime, and overtime must be paid at 125 per cent of the normal rate of pay. These standards have been effectively superseded by the market. Average hours worked in 1989 were 38.55 hours per week. Collective agreements in the metal industry will move working hours to 35 per week in 1995.

CANADA

Minimum Wage: All jurisdictions in Canada legislate a basic minimum wage.

Minimum wages range from a low of $4.00 per hour in the federal jurisdiction to $5.97 per hour in the Yukon.

Ontario's minimum wage will increase to $5.40 per hour, effective in the first week of October, 1990. Several other provinces have also announced increases in their minimum wages.

Five provinces provide a lower minimum wage for youths, and many provide lower wages for handicapped individuals, although a number of these have been abolished since *The Canadian Charter of Rights and Freedoms* passed into law. Generally, the minimum wage is set either by a wage board, or the cabinet, as is the case in Alberta, British Columbia, Newfoundland and Ontario. Four provinces have special minimum wage orders for specific industries, and exclusions from minimum wage legislation for domestic and farm workers are common.

Hours of Work and Overtime: There is little consistency in Canadian legislation on hours of work and overtime. While some provinces provide only for a standard work week, after which overtime must be paid, other jurisdictions provide a maximum work week, after which employees are not permitted to work, or not required to work.

The eight hour day and forty hour week are standard in the federal jurisdiction plus British Columbia, Manitoba, Newfoundland, and Saskatchewan.

Ontario, Alberta, New Brunswick and Quebec have a standard week of 44 hours. Nova Scotia and Prince Edward Island have standard 48-hour weeks. The four Atlantic provinces have established the overtime premium as being one and one-half times the minimum wage, while in all other jurisdictions the rate is one and one-half times the employee's regular rate. Five provinces (British Columbia, Ontario, Manitoba, Newfoundland and Saskatchewan) legislate coffee and/or meal breaks.

Section 2
PAID VACATIONS AND HOLIDAYS

THE UNITED STATES

Neither federal nor state law prescribes minimum standards for vacations or public holidays. Actual practice, which is similar to that in Canada, is determined by collective agreement or by employer policy.

JAPAN

Paid Vacations: Minimum vacation entitlements under the *Labour Standards Law* provide 10 days of paid vacation after one year of service. Additional vacation days are added at one day for each additional year's service to a maximum of 20 days.

These standards appear to be important for a large proportion of the labour force. In 1980, according to the Japan Institute of Labour, only 27 per cent of firms with 30 employees or more offered more than the minimum annual vacation to one-year employees. The corresponding percentage for five-year employees was 35 per cent.

Holidays: The law does not recognize any of Japan's 13 annual public holidays or require paid time off to observe them. By common practice, however, most employees receive all or most of these holidays. There are several additional customary holidays related to the New Year and to religious celebrations in August.

FRANCE

Paid Vacations: Annual vacations are generous in France by North American standards. Every employee, after one month's service becomes entitled to a vacation of 2.5 days per month worked to a maximum of 30 days per year. This means that employees with one year of service get 6 weeks vacation.

The minimum standard is the base for additional vacations based on age and/or length of service. Additional days of leave apply to certain employees. Women and apprentices under 21 receive an additional 2 days annual leave for each dependent child.

The law also requires employers to fix the leave schedule with due regard to family circumstances. Married couples in the same establishment are entitled to leave at the same time.

Holidays: There are 11 public holidays listed in the Labour Code, but May Day is the only one for which it is compulsory for workplaces to close. Employees in exempted workplaces who work that day must be paid double time.

Employees must be paid for other holidays not worked. Collective agreements seldom enlarge on the list, but they do add to the number on which work will cease, and provide for premium pay for those who work. Since French holidays are always celebrated on their exact dates, many collective agreements and non-union personnel practices, provide additional "bridge" days between the holiday and the weekend.

GREAT BRITAIN

There are no legislated standards for either paid vacations or public holidays. Actual practice is determined by collective agreements and employer policy. Six bank holidays are generally observed in Britain, but verification of the number generally observed and paid for in workplaces was not possible.

SWEDEN

Paid Vacations: See *Annual Leave Act*. Vacations are extensive by North American standards. Effective April 1, 1990, the minimum annual vacation was increased from 25 days to 27 days. This provision will not be fully implemented until 1991. Vacation pay is 13 per cent of annual earnings.

About 60 per cent of the workforce have additional vacation entitlements under collective agreements.

Holidays: There are no statutory requirements for holidays. This matter is determined by the social partners.

WEST GERMANY

Paid Vacations: See *Employees' Minimum Leave Act*, 1963 and later amendments.

Annual vacation is at least 18 working days where the employment relationship has existed for at least 6 months. (Working days include all days except Sundays and holidays). Vacation pay is based on the worker's average earnings during the last 13 weeks prior to the vacation.

Actual vacation standards far exceed the statutory standard, especially in collective agreements. Ninety-eight per cent of workers enjoy at least 4 weeks per year. About two-thirds of workers covered by collective agreements get at least 36 days of paid vacation.

It is an offence for a worker to take another job during the vacation period.

Holidays: See *Holiday Pay Act* of 1951.

There is no statutory standard. There are currently 10 to 14 holidays recognized across Germany, depending on the laws of the states. Only one of these, June 17th, is a federal holiday.

The law requires that, if the workplace observes a holiday and the employee does not work, he/she must be paid for the day.

Collective agreements seldom add holidays. They concern themselves with premiums to be paid for work exempted from the holiday by law, regulation or special permit. Time worked on December 25 or 26 or on January 1 usually attracts a stiff premium.

CANADA

Paid Vacations: In Ontario and the federal jurisdiction, and in every jurisdiction except Saskatchewan, employees are entitled to two weeks annual vacation after each completed year of service.

In Saskatchewan, employees receive three weeks after one year, and four weeks after ten years. Four other jurisdictions provide for a third week after a certain number of years of service with the employer. Vacation pay is usually set at four per cent of the employee's earnings in the vacation year. In Saskatchewan it is 3/52 of annual earnings. With the exception of Manitoba and the federal jurisdiction, the law generally stipulates how vacation time must be allocated. Unused vacation must be paid upon termination of employment.

Holidays: Ontario provides eight paid holidays under the *Employment Standards Act*, while the federal jurisdiction provides nine.

The number of paid statutory holidays to which an employee is entitled in the other jurisdictions varies from a low of five to a high of nine. Five jurisdictions - Alberta, British Columbia, Saskatchewan, Yukon and the Territories - provide nine statutory holidays, equalling the federal standard. Manitoba and Quebec provide seven, New Brunswick six, Newfoundland, Nova Scotia and P.E.I. five.

There are several holidays common to all jurisdictions, including New Year's Day, Good Friday, Christmas Day and Labour Day (with the exception of P.E.I.). Conditions are often set which an employee must meet to be eligible for the holiday, such as working the day before or after the holiday. As noted elsewhere in this study, Canada is unique amongst the jurisdictions studied in this treatment of public holidays.

Employers often improve on these minimum standards, especially where collective agreements are involved. In the case of vacations, the normal practice is to increase entitlements on the basis of seniority, rather than to improve the two-week minimum for junior employees. Vacations of up to six or eight weeks are not uncommon for senior employees. In Ontario, for example, the majority of employees with ten years of service, who are covered by major collective agreements are entitled to four weeks vacation.

Additional holidays beyond the minimums are also the norm. Almost half the employees covered by major collective agreements in Ontario are entitled to 11 or 12 holidays per year. Nonetheless, there are some collective agreements in Ontario which do not improve the standards.

Section 3.
PREGNANCY LEAVE

THE UNITED STATES

Among the U.S. jurisdictions studied, only Tennessee regulates pregnancy leave. State law requires up to four months of unpaid leave after 12 months service. Employees must give three months notice to invoke this provision.

In addition, the Federal *Civil Rights Act*, as amended by *The Pregnancy Discrimination Act* of 1978, provides that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes sex discrimination under Title VII. It is common for larger employers to allow unpaid pregnancy leave.

JAPAN

Under the *Labour Standards Law*, unpaid pregnancy leave is mandatory. An employer must provide 6 weeks of pre-natal leave on request, and may not employ a woman for 6 weeks after childbirth. With her doctor's permission, a woman may return to work after 5 weeks. The pre-natal and post-natal leave may be extended to 10 weeks and 8 weeks, respectively, where multiple birth is indicated.

Japanese Health Insurance provides for 60 per cent of wage replacement for the total leave period. There is also a lump-sum benefit of one-half the worker's standard monthly remuneration. The minimum lump-sum benefit is Y200,000 or about $Can 1,550. There is presently pressure for the government to require employers to continue to pay social insurance and pension contributions during the leave period, and for a longer leave.

There is no statutory provision for adoption.

There is also no provision for childcare leave except in the public service. As a means of encouraging private sector adoption of the principle, the government offers subsidies to employers who set up approved childcare leave schemes. There has been little response, according to the Japan Institute of Labour.

FRANCE

Maternity: See *Act To amend and amplify the Labour Code in regard to the rules applying specifically to women, (Social Insurance Code and Penal Code), 1975.*

A woman employee is entitled to suspend her employment contract for a period starting 6 weeks before the expected birth and continuing for 10 weeks thereafter. Under Social Security she is entitled to receive compensation equal to 84 per cent of her normal earnings during the maternity leave.

A pregnant employee may also choose to work 1 hour less per working day from the onset of her pregnancy until the beginning of her maternity leave. This is frequently improved upon in collective agreements.

The law also permits extension of the pre-natal and/or post-natal leave period in certain circumstances related to existing family size, multiple birth, medical complications and post-natal illness. In addition, the commencement of the post-confinement period may be deferred by 6 weeks where the child remains in hospital to the end of the 6th week following birth.

Adoption: A woman employee is entitled to suspend her contract of employment for a maximum of 10 weeks from the date of the child's arrival in the home, or 12 weeks in the case where more than one child is adopted at the same time. This period may be increased further to 18 or 20 weeks where the multiple adoption increases the number for which the family is responsible from less than 2 to 3 or more.

Child Care: See *Act to institute parental child-raising leave*; 1977.

An employee of either sex, upon timely notice, may suspend his/her contract of employment for the purpose of bringing up a child upon the expiry of the relevant maternity or adoption leave, or 2 months after the child's birth or arrival in the home. To qualify, the employee must have at least 1 year's employment with the employer at the time of birth or arrival of an adopted child under 3 years of age, and the leave must be taken within the 2-year period following the expiry of the relevant maternity or adoption leave.

The leave may take the form of half-time employment or full-time leave for a maximum of 1 year, which may be extended, upon application, by 1 additional year, and by a further 1-year extension to a maximum of 3 years.

These arrangements may be improved by collective agreement or in special circumstances such as death of the child or major reduction in family resources. For example, the employee may wish to change a full-time leave into a half-time leave.

At the expiry of the leave, the employee is entitled to return to his/her old job or to one with at least equivalent remuneration. The same rule applies in cases of maternity leave. The returning employee is entitled to any necessary training connected with new systems or technologies, etc. introduced during the leave period.

An employee on leave may not be employed on any other job for remuneration during that period. Where the enterprise employs fewer than 100, child care leaves may be limited by the exigencies of the operation.

The employee retains all rights to benefits acquired prior to leave and the leave period is counted as half-time in the calculation of benefits related to length of service.

GREAT BRITAIN

See "Maternity"; *Employment Protection (Consolidation) Act,* 1978 and later amendments.

Statutory Maternity Pay is paid by the employer to qualifying female employees; i.e.: full-time employees (16 or more hours per week) who have 2 years of continuous service, or part-time employees (8-16 hours) who have at least 5 years of continuous service with the employer. Qualifying maternity payments are rebated to the employer from the Department of Health and Social Services (DHSS) which administers the *National Insurance Act*.

Leave is for female employees only and covers 18 weeks of which the core period begins with the 6th week prior to the expected birth and continues thereafter for 7 weeks. The additional 5 weeks may be taken either before or following the birth. Benefits are L39.25 ($Can 82.43) per week, but the first 6 weeks are payable at 90 per cent of regular earnings.

For those who fail to qualify, the DHSS provides a State Maternity Allowance whose duration is the same but whose benefits are flat L37.50 ($Can 78.75) per week.

No benefits are payable for adoption leave or for leave for child or family care.

State benefits, in either case, are offset by the value of any wages earned during the leave period and for any benefits payable under occupational sick pay or maternity schemes.

A government representative states that an increasing number of agreements provide 1 to 2 weeks of paternity leave in connection with the birth or adoption of a child. The national civil service agreement provides maternity pay of 6 months at full pay and a further 6 months at half pay to the mother. The local authorities provide similar benefits, and some among them provide a full 52 weeks of maternity leave with full pay. Some other collective agreements provide at least 26 weeks at full pay.

SWEDEN

There are elaborate provisions for parental leave under the *Child Care Leave Act* and the *National Insurance Act*. For the terms of the latter Act, see *Insurance Schemes on the Swedish Labour Market*, 1990, a guide published by SAF, the Swedish Employers' Confederation. These laws set the prevailing standard in industry, but collective agreements may change certain provisions governing advance notice to employers.

Pregnancy: Female employees are entitled to paid pregnancy leave of 12 weeks: 6 weeks each for pre-natal and post--natal periods. To qualify, the worker must have worked for the employer for a period of at least 6 months immediately preceding the expected birth date, or have served at least 12 months out of the last two years.

Pay for the leave is provided by the National Insurance system and is approximately 90 per cent of earnings for those who have made qualifying contributions. This is the same as the normal sickness benefit. A flat daily rate of SK60 (about $Can 12.00) applies to those without the required qualifying national insurance contributions.

Paternity: The father is entitled to 10 days' leave on the same pay basis for the temporary care of children within 60 days of the newborn child's arrival home. A further 10 days applies in the case of a multiple birth.

There is a limit of 360 days on the aggregate amount of leave available to either or both parents in connection with any one childbirth occasion. This may be extended by a further 180 days per child in the case of multiple childbirth. The 90 per cent income guarantee applies only to the first 60 days (12 weeks) and the flat daily rate applies thereafter.

Amendments to the law will increase the aggregate limit, in stages, to 540 days by July 1, 1991.

Parental leaves may be divided into not more than three periods per calendar year.

Child Care: Either parent may take leave, with compensation from National Insurance, for the purpose of child care. Leave may be partly in the form of full-time leave, and partly in the form of a reduction in working hours to half or three-quarters of normal time. The right to full-time leave applies until the child has reached one and a half years of age. The right to reduced work hours applies until the child has reached eight years of age, or until such later time as the child has completed its first year of school.

An additional temporary parental paid leave of up to 60 days is available for care of a sick child under 12 years of age. The figure increases to 90 days where the leave involves the illness of primary care giver.

Care of a Relative: Sick benefits may be paid for leave to care for a relative for a maximum of 30 days during the relative's life.

The law provides for continuing accumulation of all employment rights during such leaves. The worker's job status remains intact except for changes reasonably resulting from the leave.

WEST GERMANY

See *Act on the Protection of Working Mothers (Maternity Protection Act)*, 1968 and later amendments; *Act on Payment and Leave for Care of Children,* 1985; and *Social Insurance Act,* section 200.

Childbirth: An employer is not permitted to employ a pregnant woman for the last 6 weeks of pregnancy or for the first 8 weeks after birth. In case of premature or multiple birth, the 8 weeks is extended to 12.

The woman is entitled to income benefits from Social Insurance and the employer is required to make up the difference between these payments and normal pay, which is based on the last 13 weeks worked. Full remuneration is guaranteed where the mother's health prevents her return to work upon expiry of the leave.

The woman may not be dismissed from her employment during a protected period which includes pregnancy, the maternity leave and an overall period of 4 months following the birth.

There is no provision for adoption leave.

Child Care: Either the father or mother, whoever cares for the child, may have paid leave for this purpose, from the end of the maternity leave for a maximum period of 15 months; (18 months effective July 1, 1990).

Payment takes the form of a minimal amount, DM600 per month, (about $Can 460) from the health insurance system. This payment continues for 6 months and is then re-assessed according to family income.

Collective agreements do not usually enter this area, except for a very few examples in the commerce and banking sector.

CANADA

Maternity: The typical maternity leave provision in Canada provides an entitlement to a leave of absence without pay for a period of 17 weeks where the employee has completed 12 continuous months of service.

Ontario, under the *Employment Standards Act* grants the same leave but requires that the 12 month service period include the 11 weeks immediately preceding the expected birth. The *Canada Labour Code* has a 6 month qualifying period of employment.

Four provinces provide 18 weeks leave (Alberta, British Columbia, Quebec and Saskatchewan) while two jurisdictions provide the entitlement to all employees without regard to length of service (British Columbia and New Brunswick). Quebec provides maternity leave after only 20 weeks of service. An employee is usually entitled to be reinstated in the same or a comparable position at the same wage.

Child Care, Adoption, Paternity: Only the *Canada Labour Code* provides child care leave, but several provinces offer adoption leave (Alberta, Nova Scotia, P.E.I., New Brunswick) or both adoption and paternity leave (Manitoba, Quebec, Saskatchewan).

The federal *Unemployment Insurance Act*, is the source of income replacement for such leaves. It provides up to 15 weeks of unemployment insurance benefits to a birth mother, to a father for paternity leave (under certain circumstances) and to either parent who takes time off after adopting a child.

Section 4.
TERMINATION, SEVERANCE PAY, UNJUST DISMISSAL AND WAGE PROTECTION

THE UNITED STATES

Notice of Termination of Employment: There are no individual notice of termination standards at either federal or state level.

A federal plant closing law, *The Worker Adjustment and Retraining Notification Act*, (WARN) sets minimum notice requirements for plant closings and mass layoffs by employers of more than 100 employees. The Act provides that the employer cannot order a closing or mass layoff until 60 days after notifying the employees or their bargaining representative, the state and local government. This law is primarily intended to protect communities, and the only remedies are through civil action.

There are similar plant closing notification laws in Massachusetts, Michigan and Tennessee.

Severance Pay: There are no legislated minimum standards of severance pay in the federal or state jurisdictions.

Unjust Dismissal: Governments in the United States have been hesitant to legislate in the area of unjust dismissal, since this would interfere with the so called "doctrine of employment at will". Because an employment contract is generally not for a specified duration, the American approach is to treat it as a contract that is terminable at the will of either side, with or without cause. The civil courts, however, have ruled in some cases that there is a limit to this doctrine, where it contradicts public policy, implied contactual obligations of fair treatment or "good faith". As well, employment contracts that only allow the parties to terminate the relationship under specified conditions are enforceable through civil action.

Very large damages have been awarded in some cases, and a business group called the *Commission on Uniform State Law* is now advocating a model law at the state level which would place a limit on such awards. There are also numerous "whistle blower" clauses in federal and state legislation, which specifically protect employees who report employers for violations of the law. Most of the labour statutes protecting the rights of workers make it a violation under the act to discipline or terminate workers for exercising their rights, and the remedy in these cases is normally both reinstatement and back pay.

Wage Protection: At the State level, there are regulations in place under various labour standards acts, to protect employees through enforcement of individual (non-union) employment contracts.

If an employer promises a specific benefit, he can be forced to provide it through civil action backed by the State.
The federal *Fair Labour Standards Act*, however, does not include such regulations.

There are no special provisions for wage protection in the case of bankruptcy or receivership except in Oregon and Maine, the former using Unemployment Insurance funds. Under the federal *Bankruptcy Reform Act* of 1978, the first $2,000 ($Can 2,346) of wages owed to each individual is given the third highest level of priority against assets, and employee benefit plans are given fourth highest priority.

In this, as well as many other areas of government intervention into employment markets, the government acts not as a regulator *per se* but as an enforcer of employee rights through the civil courts.

JAPAN

Notice of Termination: See *Labour Standards Law*, (LSL) Chapter II, (20).

Individuals to be terminated are entitled to at least 30 days notice or pay in lieu thereof.

The above does not apply to workers employed on a daily basis, workers employed for less than two months, seasonal work of less than 4 months or probationary employees.

Group Termination: See LSL, Chapter 7,(21). Government must be given at least 30 days notice in any instance where the number of workers to be dismissed within a month is 30 or more.

Notice of termination provisions do not apply to individual dismissals for cause or to group terminations due to natural calamity.

Severance Pay: See LSL, Chapter 7,(89). There are no severance pay requirements.

If an employer does have a severance pay plan, however, it must be clearly specified in writing in the rules of employment. [LSL, Chapter 9(89).]

Unjust Dismissal: See LSL, Chapter 2, (19). An employer may not dismiss a worker during a period of rest for medical treatment for work-related illness or injury, nor within 30 days thereafter. A woman may not be dismissed during a period of rest before and after childbirth in accordance with Article 65. These provisions do not apply if the employer pays compensation for termination in accordance with Article 81, nor when termination is due to a natural disaster or other unavoidable cause.

Wage Protection: The *Security of Wage Payment Law*, provides that, where an employer covered by Workers' Compensation Accident Insurance is declared bankrupt, the government shall assume the employer's obligation to meet unpaid wages within certain limits determined by cabinet. See LSL, Chapter III,(7).

FRANCE

Notice of Termination: See *Act to amend the Labour Code with regard to the termination of indefinite contracts of employment, 1973.*

Where the employer terminates, other than for a serious fault, the employee is entitled to notice, or pay in lieu, as follows:

- at least 6 months but less than 2 years continuous service - one month's notice for most workers and 3 months for cadres (executives);

- at least 2 years continuous service - 2 month's notice.

These provisions, according to Ministry of Labour representatives, are improved upon in many collective agreements.

Group Terminations: See *Act to abolish government authorization for dismissals;* 1986 and further amendments in 1989.

Where more than 10 and fewer than 50 workers are employed, and the employer intends to dismiss 10 or more workers within a single period of 30 days, staff delegates or the works committee must be consulted in advance. Where the number is 50 or more, the works committee must be convoked.

The employer must provide the committee with the reason for the action, the numbers to be dismissed, their occupations and the dates, as well as the total number of employed in the establishment. The employer must also state what measures will be taken to avoid or limit the number of dismissals and to assist those dismissed to find work elsewhere. These procedures have no power to prevent the terminations.

Government authorities must be notified at the same time and furnished with a copy of the minutes of the meeting referred to above, which are to include the suggestions put forward by the workers' representatives.

Severance Pay: See the *National Interprofessional Agreement* annexed to the *Act on monthly-paid status.*

An employee dismissed after 2 years' continuous service with an employer is entitled (unless dismissal was for a serious fault) to minimum severance pay, based on his earnings before dismissal:

- less than 10 years' service = one-tenth of a month's pay per year of service;
- 10 years' service or more = one-tenth of a month's pay times years of service, plus one-fifteenth of a month's pay for every year of service in excess of 10.

Collective agreements frequently improve on these provisions. It is impossible to give a common figure.

The Agreement also establishes a retirement allowance to be paid to those who voluntarily leave employment at age 65 (60 for incapacity) and where such employees qualify for the appropriate Social Insurance pension.

Unjust Dismissal: No specific statutory provision exists. All employees have access to the various dispute settlement mechanisms for this purpose, or to the *Civil Code* for damage suits.

Wage Protection: See *Act on government authorization for dismissals;* and *Act respecting salvaging and liquidation of undertakings by order of the court*, 1985; especially L 143-6 and L 143-13-1.

The wages due to employees and apprentices constitute a preferred claim on the debtor's movable and immovable property. (Civil Code: s. 2101 and 2104). Where legal proceedings for "salvaging" (receivership) are initiated, remuneration of any kind owing to these employees for the last 60 days of work shall be paid, less any amounts already received, notwithstanding the existence of any other kind of preferred debt.

The remuneration includes not only wages and commissions, but also such ancillary benefits as: end of contract (severance) allowance; compensation for failure to give notice; and other allowances specified by law or collective agreement or contact. the guaranteed payment is limited by a monthly ceiling equal to not less than 13 times the minimum social security benefit.

Employers are required to insure employees against the risk of non-payment in a salvaging situation. Where employees participate in a profit-sharing arrangement, these amounts must also be insured by the employer. The same goes for early retirement arrears due to employees or former employees. The insurance scheme, Assurance de Guarantie de Salarie (AGS) is a non-profit scheme instituted by labour, run by appointees of unions and employers and approved by the Minister of Labour, but financed entirely by contributions from the employer. The AGS is subrogated to any individual claim against the employer by an employee.

This method of wage protection has now been adopted in principle for inclusion in the Social Contract of the European Economic Community.

GREAT BRITAIN

Notice of Termination: See *Employment Protection Act,* 1975 and later amendments; and *Employment Protection (Consolidation) Act*, 1978 and later amendments.

An employee with at least one month service must be given 1 week notice of termination. Those with 2 to 11 years of service must receive notice equal to 1 week for each year of service to a maximum of 12 weeks. The employee is entitled to receive from the employer a written statement explaining the reason for dismissal.

Group Termination: Where the employer proposes to dismiss at one establishment:

- 100 or more employees within a period of 90 days or less, the notice period is at least 90 days before the first dismissal;
- 10 or more employees within a period of 30 days or less, the notice period is at least 30 days before the first dismissal.

The employer is required to consult a union representing the affected employees as early as possible before the date of the layoff, both in the case of individual and group terminations. The names and occupations, method of selection, period of dismissal and reason for doing so must be provided to the union. The Secretary of State must also be given the same notice in the case of intended group terminations.

Severance Pay: See "Redundancy Payments"; *Employment Protection (Consolidation) Act,* [EP(C)Act].

Where employees are to be dismissed as redundant or reduced to short-time work, they are entitled to redundancy pay from the employer. The exact amount is calculated in schedules to the EP(C)Act. The basic formula, however, is:

- age 21-40 = 1 week's pay (maximum L165.00 or $Can 346.50) per year of service (maximum 25 years); and

- age 41-65 = 1.5 week's pay per year of service. The same maximums apply to this category, but may be reduced by a special calculation which affects workers nearing age 65.

In practice, collective agreements often improve upon the notice provisions and amount of redundancy payment required by the Act.

Employers, for example the steel industry, have been willing to make redundancy payments well beyond the statutory provision in order to realize improvements in productivity from decreasing the workforce while introducing improvements in technology.

According to a Ministry of Employment representative, collective agreements frequently provide redundancy pay of 4 weeks, earnings times years of service, usually capped by a limit on credited service or earnings to be used in the calculation.

Unjust Dismissal: See "Unfair Dismissal"; *EP(C) Act*. Unfair dismissal is defined in the Act as any dismissal which is a breach of protection provided by the Act; e.g., to members or non-members of a union, older workers under compulsory retirement age, or under age 65 if there is no employer policy on compulsory retirement, recipients of maternity pay, and redundant workers who have been given insufficient notice of dismissal.

Non-unionized employees may seek damages in the courts. Unionized employees, including those whose union does not have a collective agreement with the employer, may seek compensation from an Industrial Tribunal. Reinstatement is not often sought or granted to workers not included in a collective agreement.

Wage Protection: See "Employer Insolvency"; *EP(C) Act*. Workers are protected against loss of up to 8 weeks' worth of unpaid wages, together with certain other payments required by law or to which they may be entitled by way of collective agreement or employer policy. These include an employer's required payments into an employee pension plan.

The Secretary of State may make the necessary payment to an affected employee (and/or to the employee pension fund) from the Redundancy Fund. The state then acquires the workers' rights vis-a-vis the insolvent employer. These provisions apply to all cases of insolvency, i.e., bankruptcy and receivership.

SWEDEN

Notice of Termination: See *Act on Security of Employment;* and *Act on Redundancy Pay Compensation*.

Under Swedish law, any dismissal must have objective grounds, and objective grounds do not exist where the employer could reasonably have provided other work.

Notice must be given at least 30 days in advance, if the employee is less than 25 years of age. The notice period increases to 2 months for workers age 25 or over and increases by an additional month for each 5-year age increment to a maximum of 6 months' notice for those 45 or older. Summary dismissal, provided it meets the objectivity test, does not require notice.

The dismissed worker must be given a written notice which explains the workers' recall rights, if any, and procedures for retaining and activating these rights. The notice must also explain the procedure for filing a claim to invalidate the dismissal or to claim damages for insufficient notice or other reasons.

The law also defines priority (recall) rights for re-employment and requires dismissals to be made in order of seniority.

During temporary lay-offs, the worker is entitled to normal pay and benefits, except in cases of seasonal or normally intermittent work. The employer is entitled to a flat rate of compensation of SK300 (about $Can 60) per full lay-off day from a redundancy pay fund to which both government and employers contribute.

Group Termination: See *Act on Co-determination at Work;* and *Act on Various Employment Promoting Measures*.

The employer is required to negotiate with the union with respect to any "alteration of activities" including group terminations of employment.

The employer must also give notice to the County Employment Board wherever 5 or more employees are to be dismissed. The periods of required notice are:

- up to 25 employees = at least 2 months;
- 25 to 100 employees = at least 4 months; and
- more than 100 employees = at least 6 months.

Severance Pay: There is no statutory provision.

Unjust Dismissal: The individual may sue in an ordinary court. Appeal will be to the Labour Court. Under Swedish law, employment is deemed to continue until the appeal process has been exhausted in cases of dismissal (excluding summary dismissal), but summary dismissal must be well-grounded to escape reversal in the courts.

Wage Protection: See *Law on Priority Rights,* #741 of 1970. In cases of bankruptcy and receivership, the government will pay the employee the amount due and then pursue the employer and/or receiver for the money. Wages have third or fourth priority in both bankruptcy and receivership.

WEST GERMANY

Notice of Termination: See *Protection against Dismissal Act*, 1969; *Act on the Civil Code, 1896; Act on Terms of Notice for White-Collar Workers, 1926*; and *Works Constitution Act, 1952,* and later amendments in all cases cited. Notice provisions for individuals are:

white-collar workers:

at least
3 months after 5 years' service,
4 months after 8 years' service,
5 months after 10 years' service, and
6 months after 12 years' service.

Dismissal is only valid at the end of a calendar quarter.

Because of the growth of the white-collar sector, these provisions now cover more than 50 per cent of the work force.

blue-collar workers:

2 weeks minimum,
1 month after 5 years' service,
2 months after 10 years' service, and,
3 months after 20 years' service.

Dismissal is valid at the end of any month, except for workers with 20 years or more service who cannot be dismissed before the end of the next calendar quarter.

The gap between blue and white collar standards has been steadily eroded by collective bargaining.

Group Termination: The employer must notify the labour office before dismissing, in any period of 30 calendar days:

- more than 5 in a workplace of 20 to 59;
- 10 per cent, or more than 25, in a workplace of 60 to 499; and
- 30 or more in a workplace of 500 or more.

This requirement is in addition to those which apply to individual notice. The employer must, at least 2 weeks before the above notification, provide a written explanation to the works council, which includes details of those to be dismissed, the grounds for dismissal, the number of persons currently employed, the period over which the dismissals are to take place, and "any other useful information". This report, together with the works council's written opinion in response, must be forwarded with the notice to a Ministry of Labour office.

Severance Pay: Severance pay is due only where an employee has successfully pursued a claim against dismissal and the employer does not wish to reinstate the employee.

Unjust Dismissal: See *Civil Code; Protection Against Dismissal Act, 1969;* and later amendments; *Works Constitution Act 1972* and later amendments; and *Employment Promotion Act*, 1985.

Whether the worker is a union member or not, he/she may seek compensation for unjust dismissal. Since the onus is on the employer in all dismissals to take all feasible measures to avoid them, and then to justify the action, through the works council etc., very few court actions of this kind are required and very few succeed. Reinstatement is possible, but not often sought by the dismissed employee.

Wage Protection: See *Recht der Arbeit;* special section on Konkurs (Bankruptcy).

In both bankruptcy and receivership, pay owed to the worker, up to 6 months' remuneration, has the first priority. Unemployment insurance will pay this remuneration owed to a worker, and will then be subrogated to the worker's claim against the employer.

CANADA

Notice of Termination: The federal jurisdiction and all the provinces have legislation requiring an employer to give notification to an individual whose employment is being terminated. It is generally not required for individuals who have not completed three months of employment, definite term contracts, just cause dismissal, temporary lay-off, individuals who refuse alternate work and lack of work due to unforeseeable events. The amount of notification required is generally linked to years of service.

Under Ontario's *Employment Standards Act*, the required notice for individual termination is:

- one week notice for less than one year service;
- two weeks notice for one but less than three years service;
- notice is increased by one week for each additional year of service to a maximum of eight weeks notice after eight years or more of service.

The federal standard, under the *Canadian Labour Code*, is a uniform two weeks notice.

Group Termination: Seven jurisdictions (federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec) require an employer to give advance notice of a projected termination or large scale lay-off of a group of employees to the employees themselves, their bargaining representative(s) and government. The legislation generally distinguishes between a temporary lay-off and a permanent termination, with no advance notification required for temporary lay-offs.

Ontario's required notice in such cases is:

- 50 to 199 employees affected = eight weeks,
- 200 to 499 employees affected = 12 weeks,
- 500 or more employees affected = 16 weeks.

Notice provisions apply to those with at least three months of service. Notices must be in writing to each affected individual and to the Minister of Labour who must also be provided with information about the causes of the terminations, relevant employee statistics, consultations held by the employer and other measures taken.

The Federal requirement is 16 weeks notice where 50 or more employees are affected, in addition to the notice requirement for individual termination.

Severance Pay: Only two jurisdictions in Canada provide for mandatory severance pay. In the federal jurisdiction, any employee with 12 months service is entitled to two days' wages for each year of employment, with a minimum of five days pay, upon termination.

In Ontario, an employee with five years service is entitled to one weeks' pay for each year of service, up to a maximum of 26 weeks' pay. These provisions apply where an employer's annual payroll is $2.5 million or more. Where the payroll is less than $2.5 million, severance pay must be paid when 50 or more employees are terminated in a 6-month period due to the permanent discontinuance of all or part of a business at an establishment. A partial year of service is also prorated.

Unjust Dismissal: Three Canadian jurisdictions, Nova Scotia, Quebec and the federal jurisdiction, prohibit an employer from terminating the employment of an individual without just cause. While this generally creates a right to reinstatement, there is rarely a right to receive damages for the termination, although payment of back wages owed is generally provided for. Where reinstatement is not specifically provided as a remedy, the likely result of a successful suit by the employee is a damage award by the court.

Wage Protection: Jurisdiction over bankruptcy and insolvency is conferred upon the federal government by the *Constitution Act*, and supersedes any provincial legislation which infringes on this jurisdiction. Under the *Bankruptcy Act*, wages have a limited priority of $500, which ranks them ahead of most unsecured claims but behind secured claims. As well, property held in trust under the Act is not part of the general assets to be divided in cases of bankruptcy. Ontario, Manitoba, Nova Scotia and Prince Edward Island have provided by law that vacation pay is deemed to be held in trust and accruing to each employee, and represents a lien on assets. Manitoba and Saskatchewan have enacted the same protection for all wages owed.

A 1989 Supreme Court of Canada decision has had the effect of invalidating provincially-created deemed trusts in bankruptcies.

Section 5
OCCUPATIONAL HEALTH AND SAFETY

THE UNITED STATES

The *Occupational Safety and Health Act,* passed in 1970, applies to virtually every private sector employer in the nation (except for mines, which are covered by a separate *Federal Mine Safety & Health Act*, self-employed persons, and family farms).

The *Occupational Safety and Health Act* is enforced by direct regulation, and production can be stopped by government inspectors for non-compliance. Labour representatives consistently reported poor enforcement of this law, particularly since the beginning of the Reagan administration, although business groups seem to have no complaints. Business and labour representatives agree, however, that there is insufficient input for state interest groups into the policy development process at the federal level.

Occupational health and safety is an interesting area of employment law in another respect. The federal government essentially sub-contracts its jurisdiction to qualifying states on 50% cost-shared basis. So far, 23 states or jurisdictions have submitted laws and enforcement plans which meet the federal standards, and are operating approved "State OSHAs". Two additional states have approved programs covering only public sector employees which are excluded from the federal legislation. To stay qualified, they must participate in a national data bank, submit to federal inspections and obtain re-certification on an annual basis. The state regulations must be at least as effective as the federal ones, but they do not have to use the same regulatory mechanisms.

Most of the states currently operating OSHAs were initially approved between 1973 and 1974. There is a barrier to further expansion of this arrangement since federal subsidies of up to 50 per cent are limited by available funds, and the first states to comply used up a disproportionate amount of money. Thus a state now wishing to take over OSHA in order to improve on federal standards is faced with the substantial cost of taking over more than half the jurisdiction.

The only stakeholders under the *Occupational Safety and Health Act (OSHA)* are employers and employees. Both are given general duties by the Act. Separate standards set out the details.

The Act does not require the recognition of worker health and safety representatives or the establishment of joint committees.

OSHA does not contain a right to refuse work or to stop work although the Act does provide some protection for workers against discrimination for attempting in good faith to observe the provisions of OSHA. Worker training is not mandatory and there is no statutory right to know.

The *National Advisory Committee on Occupational Safety and Health* (NACOSH) is a tripartite agency which advises and consults with the government on matters related to the Act.

OSHA covers most private workplaces including farms and homes, but excludes the public sector. An *Occupational Safety and Health Review Commission* handles appeals from administrative orders and decisions.

JAPAN

In the middle of the 1950s, Japan experienced a steep rise in industrial accidents as a result of rapid industrial change. In 1958, the Ministry of Labour implemented the *Five-Year Industrial Injury Prevention Program*, under the authority of the *Labour Standards Law*. This program has continued, with the 7th 5-year program starting in 1988.

The *Labour Standards Law* proved to be inadequate for continued improvement, and in 1972 a separate *Industrial Safety and Health Law* was enacted. In addition to setting specific standards, this law includes a general responsibility on employers and contractors for maintaining a safe and healthy workplace. Health and safety education for workers and health and safety committees are both mandatory, but there is no statutory "right-to-know". A separate law, the *Working Environment Measurement Law*, sets the actual standards and provides for workplace monitoring.

The *Health and Safety Law* applies to all employees except for those covered by separate Mining and Maritime safety laws. There is no worker right to refuse or stop unsafe work; the responsibility for maintaining safety rests entirely with the employer. According to an official of Rengo, a large labour central, the *Health and Safety Law* accounts for about half of all labour standards violations.

Regulatory development is handled by the *Labour Standards Investigative Council*, a tripartite body. Several health and safety research and education agencies are maintained, including the University of Occupational and Industrial Health, which trains physicians, nurses and technologists.

FRANCE

See *Act respecting measures to enhance the prevention of accidents at work, 1976;* and *Act respecting health, safety and working conditions committees, 1982.*

The law places specific responsibility on employers and professionals who work for them. Workers have no specific duties under the Act.

Joint health, safety and working conditions committees (HSWC) are mandatory in establishments with at least 50 employees. In establishments with more than 10 but less than 50 employees, committee duties are performed by staff delegates. An inspector may require the establishment of a committee in smaller workplaces. Committees are required to perform a workplace inspection at least every quarter and to investigate accidents and incidents of occupational disease. The committee is also concerned with working conditions outside the strict limits of health and safety. This includes the integration of handicapped persons in the workplace. The committee must be consulted in advance by the employer about these and any other workplace developments which may affect health and safety.

Employees have the right to refuse unsafe work on a "reasonable cause" basis, unless the refusal would endanger a fellow worker. There is no right to stop unsafe operations, except by an inspector or the employer.

Employers are obliged to provide safety training to workers. There are regulations concerning the labelling and identification of dangerous substances, but no statutory employee "right-to-know".

There is a quadripartite health and safety agency, the Conseil Superior de la Prevention des Risques Professionelle (CSPRP). It is made up of representatives of employers, unions, government and health and safety professionals. This agency is the primary source of advice to the government on regulatory development.

All industrial and service establishments are covered by the health and safety laws. There is a parallel law for construction.

GREAT BRITAIN

The *Health and Safety at Work Act* applies to all workplaces. It empowers its executing agency, the Health and Safety Commission and its Health and Safety Executive, to draw up regulations and Codes of Practice for health and safety in the workplace. The law requires each employer to maintain a written statement of health and safety policies. The law also places responsibilities on manufacturers of hazardous materials, employees and self-employed persons in charge of certain premises.

The law, and regulations and Codes of Practice made thereunder, may be improved upon in collective agreements and/or in the employer's written policy statement.

The Act makes provisions for mandatory health and safety representatives appointed by the union or elected by employees in non-union workplaces. Representatives can request that a Health and Safety Committee be created, and the employer must do so within 3 months.

Safety representatives represent employees in consultations with the employer in developing measures to ensure health and safety, and other duties as may be prescribed by regulation. Safety representatives have the right to investigate complaints and to perform regular workplace inspections. The safety committee reviews the measures taken for the safety and health of employees, studies accidents and disease statistics and considers reports from inspectors and safety representatives.

There is no right to refuse unsafe work, and no right to shut down unsafe operations.

There is no right to training under the *Health and Safety at Work Act*, but training is covered under a new right-to-know regulation known as COSHH, for *Control of Substances Hazardous to Health*, which came into effect in October 1989. COSHH is similar to the Canadian WHMIS regulations, except that it contains no labelling requirements. (The European Community has proposed that member countries adopt and publish standard safety data sheets on hazardous chemicals).

The *Health and Safety Commission* (HSC) is a tripartite body with a government appointed chairman. HSC advises the government on regulatory development. Neither the HSC nor its Executive designs or conducts training or issues certificates of qualification.

Appeals from inspectors' decisions go initially to Industrial Tribunals and then onward, if necessary, to the courts.

SWEDEN

Under the *Work Environment Act* and *Work Environment Ordinance*, health and safety law applies to all employees and self-employed persons. The laws are addressed to employers and employees.

A labour representative must be appointed where there are 5 employees, and a joint committee where there are 50. Duties and responsibilities are broadly defined in law, but details are left to the social partners. The central labour and employer bodies have adopted a *Work Environment Agreement* to govern their obligations under the Act and Ordinance.

An individual employee has the right to refuse unsafe work, and a work representative has the right to shut down an unsafe operation, subject to an eventual ruling by an inspector.

Worker training is delivered by a bipartite body, the *Swedish Joint Industrial Safety Council*. The employer's obligation is established in the general language of the *Work Environment Act*. Worker training is covered in greater detail in the Work Environment Agreement.

There is no specific "right to know" embodied in the law, but safety delegates have access to a large amount of information, and are expected to pass it on to individual workers. Sweden has no system equivalent to Canada's WHMIS.

The *National Board of Occupational Safety and Health* (NBOSH) is a tripartite health and safety agency. It has broad responsibilities for supervision of the Act and Ordinance and directs the labour inspectorate. NBOSH also initiates health and safety research which it delegates to an affiliated research agency.

NBOSH gathers and publishes work accident and illness statistics and maintains an electronic databank of this and other health and safety information to which all regional offices of the inspectorate have access by computer terminal. This occupational injury system, known by its Swedish initials, ISA, has been standardized for all of Europe by the ILO. NBOSH plays no role in workplace training, but does offer high-level training to health and safety professionals and specialists, including employer and union representatives.

The social partners are consulted and joint studies are carried out before changes are made to laws or regulations. Much of the subject matter that would be covered by regulations in Ontario is dealt with in the *Work Environment Agreement* between the social partners.

Appeals of all kinds are handled entirely within the NBOSH. Administrative judges are employed within the Board for this purpose. However, alleged interference with a safety delegate, or intimidation of, or discrimination against, workers who have asserted their rights under the law or the agreement, are dealt with directly in the Labour Courts.

WEST GERMANY

See *Occupational Health and Safety Act*; and *Works Constitution Act*; 1972 and later amendments.

The German *Occupational Health and Safety Act* is not very comprehensive. There are many complementary separate laws and regulations dealing with specific risks, occupations, workplaces and materials.

The Act requires all employers to establish joint health and safety committees including representatives from employers and employees as well as safety experts, such as industrial physicians. Under the *Works Constitutional Act*, works councils have general duties to promote health and safety as well.

The law creates no individual right to refuse unsafe work, and does not empower anyone other than an inspector to stop work.

There is no "right to know" legislation and no system similar to Canada's WHMIS.

There is no single agency responsible for health and safety issues, but the *Federal Institute for Occupational Health and Safety* (BAU) advises the government on legislation, funds research and provides training to Joint Health and Safety Committee members. Consultation for regulatory development is managed through the BAU and its counterpart state agencies.

Each state in the Federal Republic has its own workplace inspectorate.

Much of the subject matter covered by the Ontario *Occupational Health and Safety Act* is not regulated by any law, but is decided by "private law", that is case law developed by court decisions.

CANADA

In Quebec, New Brunswick and British Columbia, administration of health and safety law is the responsibility of either a commission or board, with members from industry and labour. In the other seven jurisdictions, it falls under the authority of a government department. In Ontario and the federal jurisdiction, responsibility is borne by the Ministry of Labour and Labour Canada, respectively.

Employers and employees are defined as major stakeholders in every jurisdiction. Manitoba, Saskatchewan, Nova Scotia and P.E.I. include self-employed persons, while New Brunswick and Ontario define owners as stakeholders. Contractors are defined in six jurisdictions, and suppliers in five.

The right to refuse unsafe work exists in every jurisdiction, but in no Canadian jurisdiction do workers or worker representatives have the right to stop work. Joint health and safety committees also exist in every jurisdiction but are discretionary in Alberta, P.E.I. and Newfoundland. In every other jurisdiction, they are mandatory.

Training requirements vary by jurisdiction, but there is usually at least a minimum requirement that employers provide sufficient training to ensure the health and safety of the workforce.

In all jurisdictions, there is a *Workplace Hazardous Materials Information system* (WHMIS), which stipulates how information is to be provided to employees about hazardous or controlled products.

Nine of the eleven jurisdictions provide for an Advisory Council, and this is generally the only body consulted for regulatory development.

Section 6
WORKERS' COMPENSATION

THE UNITED STATES

Workers' Compensation has been described by one expert as the "last bastion of State's rights". Nonetheless, the federal government plays a small role in this field. In 1970-72, the Nixon administration set up the *National Commission on State Workers' Compensation Laws,* and threatened federal intervention if the states did not improve their regulations. Most did, and there was no intervention, but the federal government continues to operate a small office within the Employment Standards Administration which monitors state compensation programs and acts as a clearing house for information. As well, legislation has been introduced in the U.S. Congress for the past several years to give the federal government a direct role in the system by setting federally mandated minimum standards. These bills have not yet received sufficient support to move them beyond the committee level.

The federal government operates three separate workers' compensation programs for employees excluded from state jurisdiction. They include federal employees, longshore and harbour workers, and coal miners afflicted with "black lung".

In forty-seven of the fifty states, coverage under the state law is compulsory. Only in South Carolina, New Jersey and Texas can an employer elect not to carry some form of insurance.

Most state workers' compensation programs differ substantially from the Canadian model. A typical plan allows three options: private insurance, self-insurance with government permission and some form of government fund to cover uninsurable companies. The insurers collect premiums (usually including an administrative surcharge to be remitted to the state) and dispense benefits. The state agency becomes involved in appeals regarding disputed claims.

Premium levels are normally set by the insurance industry, but are sometimes imposed by government. In every case the premiums are paid by employers.

Benefit levels tend to be lower than in Ontario, usually about 2/3 of normal earnings, but coverage is wider, typically extending to all employed workers except seasonal farm labour, casual employees and domestic workers. Most jurisdictions permit employees in an exempted class to be brought in voluntarily by the employer.

Virtually every state provides a waiting period of three to seven days before income benefits become payable. In Canada, appeals are generally to a Board of Appeal, with limited grounds for judicial review, while most U.S. jurisdictions provide for appeals to either a Court of Appeal or Supreme Court.

In general, there is less concern with preventative education and rehabilitation in the states than in Ontario. Exceptions to this generalization are noted in the sections on individual states in the Database.

JAPAN

The *Workmen's Accident Compensation Insurance Law* was passed in 1947.

The insurance law applies to all employees in the private sector, although participation is voluntary for firms in agriculture, forestry and fishing with fewer than five regular employees. This exclusion is considered temporary. The *Labour Standards Law*, Chapter 8, contains parallel provisions. It provides for self-insured compensation by uninsured employers. This law, however, allows employers to avoid compensation in cases where the employee was seriously at fault, and there have been proposals to replace it by extending the mandatory insurance to cover excluded employers.

Administration is similar to the Ontario system. Income replacement is 60 per cent of regular wages. The plan is financed by employer premiums set by the Ministry of Labour on an experience-rated basis. Rehabilitation services are available, but the injured worker has no right to return to his or her former job.

Under the *Labour Standards Law*, an employee who is injured or becomes ill on the job may not be dismissed during the period of medical treatment or for 30 days thereafter.

FRANCE

See *Act respecting the organisation of occupational medical services,* 1946 (Sets out the duties and authority of industrial physicians and regulates where and in what circumstances they are to be employed); *Act respecting the resettlement of handicapped workers,* 1957; and the *National Interprofessional Agreement* (NIA) annexed to the *Act respecting changeover to monthly-paid status.*

France has an employer-financed workers' compensation system covering all employees and establishments. It is operated by the national social security scheme, the *Caisse National d'Assurance Maladie* or CNAM which also administers the joint contributory plan covering non-occupational disability. There is considerable overlap between occupational and non-occupational benefits in the coverage of short-term disabilities.

The basic benefit for temporary disability from whatever cause is 50 per cent of earnings.

Actual income replacement is more generous, however, because the NIA (see above) provides that employers must top up sick leave benefits to a minimum 90 per cent of pay for the first 30 days and two-thirds of pay for the next 30 days. Both figures are increased by 10 days for each period of 5 years service, up to a maximum of 90 days coverage at each rate of compensation. The NIA guarantees the worker's right to return to the same job, or one of equivalent remuneration. A sick or injured worker is deemed to have only temporarily suspended the employment relationship.

Private insurance is often used to supplement the public benefits.

Appeals against assessments are handled by an internal 3-stage system within the CNAM, at the apex of which is the national commission.

GREAT BRITAIN

Britain's workers' compensation plan is administered by the National Insurance scheme which also covers maternity benefits and income losses resulting from non-occupational disabilities.

Financing is part of the overall national insurance program which is paid for by mandatory contributions from both employers and employees. These benefits are often supplemented through private insurance.

Statutory Sick Pay is paid for disability causing absence from work from all causes. The duration of the benefit is 28 weeks and there are two-flat rate benefit levels, depending on income, of L32.50 ($Can65.06) per week and L52.00 ($Can104.10) per week. Weekly benefits are paid by the employer who is reimbursed by the Department of Social Security.

Invalidity Benefits (IB) are payable for disabilities which exceed 28 weeks. IBs are comprised of a basic invalidity pension, an additional pension based on work income and an invalidity allowance based on age. These payments are offset for wages earned by the recipient and dependents.

Recipients of IBs are switched on to national insurance retirement pensions at age 65 (men) 60 (women).

A Benefit for Industrial Injury or Disease is payable in addition to the other benefits. It begins after the 15th week of a workplace-based disability. Payments are tax-free.

Both permanent and temporary disability payments are based on an assessed percentage of disability to a current maximum of L76.60 ($Can160.86) per week. A Reduced Earnings Allowance (REA), for permanent partial disability, is payable to those who are unable to return to their regular work. REA is also based on the assessed percentage of disability.

There are no special survivor benefits other than those payable under national insurance. There is no legislated standard regarding rehabilitation or the right to return to work.

According to a labour representative, most large employers, whether unionized or not, provide much better benefits than the law. Collective agreements usually contain the best of these provisions.

SWEDEN

Compensation for work-related disabilities is a distinct part of the Swedish *National Insurance Act*, which covers all disabilities.

The work-related plan is publicly operated and employer-financed. It covers all employed persons and the self-employed.

Income replacement for the first three months is set at 90 per cent of normal monthly work income, up to a maximum, for disabilities from all causes. After that, income replacement rises to 100 per cent, and other special benefits for work disabilities are activated. Private insurance, established by national collective bargaining, may extend or enhance some of the public benefits.

Permanent total disability victims receive a life annuity calculated in the same way as the disability pension under normal, non-occupational national insurance provisions. Survivors are also covered under the broader provisions of national insurance. Permanent partial disability victims receive life annuities based on impairment of earning capacity.

Rehabilitation is the responsibility either of the medicare component of national insurance or the Labour Market Board (AMS).

WEST GERMANY

The workers' compensation system in Germany is financed by employers, through 35 bipartite (employer-union), non-profit funds in the private sector. All employees are covered.

The 35 *Bundesgenossenschaften*, or BGs as the funds are known, have many more counterparts in the various segments of the public service.

Short-term disability income replacement of all disabilities is paid directly by employers under national law at full pay of up to 6 weeks, but after that, the relevant BG takes over. BG benefits are uniform and are based on normal work income and assessed degree of disability. For example, a temporary total disability attracts a benefit equal to 80 per cent of the worker's regular income. A total permanent disability is paid an income of about 64 per cent of regular earnings, approximately the level of retirement benefit from the national contributory pension plan. A surviving spouse receives 60 per cent of the deceased worker's permanent disability pension, or an actuarially equal lump sum. Collective agreements do not supplement these benefits through additional private insurance.

Responsibility for rehabilitation is borne both by social insurance and the BGs. Portions of the cost may be met out of BG funds, unemployment insurance and the national pension fund depending on the age of the injured worker, the nature of the disability and relevant therapy and vocational training elements of the rehabilitation program. The employee has the right to return to his or her job, or its equivalent. See the *Works Constitution Act;* and the *Protection Against Dismissal Act*.

CANADA

Comprehensive workers' compensation acts have existed in Canada since 1915, and every jurisdiction in Canada provides for compulsory participation by those employers to whom the act applies. Unlike the United States, self-insurance by the employers is not permitted. Financing in all jurisdictions is by employers, who are required to pay into a provincial fund, although in New Brunswick, private insurance may be available at the discretion of the Board. Home workers are excluded from the act in every jurisdiction. Five jurisdictions exclude casual workers, and domestic workers are excluded from six. Entertainers, athletes and farm labour are also common exclusions.

Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario, Quebec and Saskatchewan replace 90% of income in the case of a total disability. In British Columbia, Manitoba, and P.E.I., the income replacement level for a total disability is 75% of earnings. Differences with respect to survivor benefits are vast, varying according to number of children, whether or not the spouse is dependent, and amount of time benefits are provided for. In the case of partial disability, a proportion of the difference between pre-injury and post-injury earnings is generally provided.

In every jurisdiction, the board may make expenditures from the accident fund for rehabilitation. In Alberta, British Columbia, Ontario, Quebec and Saskatchewan the board may provide vocational rehabilitation to a dependent spouse.

There is no workers' compensation legislation specifically within the federal jurisdiction.

Generally speaking, workers' compensation legislation in the federal jurisdiction is limited to federal public servants. The federal legislation, *Government Employees' Compensation Act*, refers to provincial legislation for the determination of benefits and the adminstration of the compensation system.

Section 7
LABOUR RELATIONS

THE UNITED STATES

The National Labour Relations Act (NLRA) is similar in structure to its counterpart Canadian legislation and is in fact the model on which Canada's initial collective bargaining legislation was based.

It regulates aspects of the organizing process and provides for the certification of unions as bargaining agents through supervised secret-ballot elections. The *National Labour Relations Board* (NLRB), created by the Act, administers all aspects of the law, and this includes deciding disputes over unfair labour practices as defined in the NLRA.

The scope for judicial review of the NLRB is very limited. The law covers employers in the federal jurisdiction, defined as enterprises which "affect commerce", and pre-empts all state law in this legislative area. Unlike the minimum wage legislation, it includes specific definitions for a range of industries, specifying how large an employer must be to be covered. Many states have corresponding laws which cover smaller employers, sometimes called "*Little Wagner*" Acts. None of these laws covers public employees.

The NLRA differs from its Canadian counterparts in several ways. For example, it does not require the inclusion in collective agreements of provisions for the final and binding settlement of rights disputes by arbitration, although in fact, most U.S. collective agreements do contain such provisions. There is a duty to bargain in good faith, but no specific duty of fair representation. The NLRA also does not provide for certification without an election, as do all but three of the Canadian labour relations Acts (Alberta, B.C. and Nova Scotia).

Some state laws have banned the closed shop and other forms of compulsory union membership or compulsory dues payment. Three of the states included in the study are so-called "right-to-work" states.

The United States differs, in this respect, not only from Canada, but from all other nations included in the study except France, where the prohibition of compulsory union membership and employer check-off of union dues has distinctly different origins.

JAPAN

Within months of the Japanese surrender in 1945, laws were passed to regulate trade union recognition and collective bargaining. These statutes, inspired by the U.S. occupation, were designed as part of a larger program to weaken the power of a few groups which had previously controlled Japanese industry. The trade union style, although initially heavily influenced by the Americans, gradually evolved in the 50s and 60s to take on its present characteristics.

Japanese private sector workers have the constitutional right to join unions, to bargain collectively and to strike. The *Trade Union Law* obliges the parties to bargain in good faith and prohibits unfair labour practices. *Labour Relations Commissions* enforce these provisions. There is a separate *Labour Relations Adjustment Law* which provides for conciliation, mediation and arbitration. Public employees, except for police, prison and military personnel, have the right to join unions, but are prohibited from striking. There is a separate body of law governing dispute settlement in the public sector.

Recognition is normally voluntary. In order to use the services of the Labour Relations Commissions, however, the union must be certified under the *Trade Union Law*. This certification procedure involves scrutiny of union constitutions, but there is no specific duty of fair representation. Because of the large number of enterprise unions, collective agreements and data based on them are not generally available. According to a Ministry of Labour survey there were about 72,792 unions, with 12.2 million members in 1988.

FRANCE

All employees have the right to join unions, to bargain collectively and to strike. The right to strike is included in the national constitution.

The French system of representation is pluralistic. Workers may belong to any union claiming existence in a workplace. There is no statutory exclusive representation of any group of workers. Unions negotiate with employers on the basis of their practically demonstrated strength in the workplace. It follows that there is no statutory requirement to bargain in good faith, no duty of fair representation and no provision for imposition of a first contact.

The government decides which unions or central bodies are nationally representative for purposes of participation in national or sectoral collective agreements, and in national tripartite bodies, but does not certify bargaining agents or otherwise become involved in matters of worker representation.

The law forbids all forms of checkoff and compulsory union dues payment, with some minor exceptions.

GREAT BRITAIN

There is no statutory right to collective bargaining, although certain unfair labour practices are unlawful. There is no certification process and no provisions for exclusion representation. An employee may choose to belong to any of several unions in his or her sectoral or occupational field, whether or not that union has reached a recognition agreement or other collective agreement with the employer. Nonetheless, both employers and unions prefer exclusive bargaining units and this is the conventional practice.

The voluntary revocable checkoff of union dues is the normal arrangement. There is no duty to bargain in good faith and no duty of fair representation. The right to strike exists without statutory protection, but recently, legislated strike voting procedures have been introduced under the *Trade Union Act*. Striking employees are not protected against dismissal by their employer.

SWEDEN

There are no legislated rights to collective bargaining in Sweden. There is no certification process and no law relating to representation. An employer refusal of recognition would be cause for a recognition strike, but this seldom, if ever, happens. The main employer and labour bodies have agreed that they wish, so far as practicable in any given case, to maintain a "one industry - one union" system of industrial relations.

Similarly, union membership and dues collection is left to labour and management. There is no duty to bargain in good faith in law, and no first contract legislation. There are no laws affecting strikes, although in sensitive industries the government sometimes intervenes on an *ad hoc* basis.

The duty of fair representation is determined by ombudsmen within the unions, or through the common law courts. Strikes may be ended by legislation, but only when there is an emergency. There is no blanket essential service law or strike ban affecting any industry or occupation.

WEST GERMANY

All private sector employees have the right to join unions and engage in collective bargaining. There is no certification process, however. Refused recognition will result in a strike, but this seldom happens, since most employers belong to the German Employers Confederation (BDA) which, as a social partner, recognizes trade union rights. Dues are collected by bank check-off and never by the employer. There is no form of compulsory union membership or dues payment, but this arrangement arises from union constitutions. There is no law which bans such practices.

There are no requirements for bargaining in good faith or first contract imposition. There is no duty of fair representation in law. Individual disputes go first to the works council, then to labour court.

CANADA

Like the United States, all Canadian jurisdictions regulate worker representation and collective bargaining. These matters are governed in Ontario by the *Labour Relations Act*, and in the federal jurisdiction by the *Canadian Labour Code*.

The relevant labour relations laws in every Canadian jurisdiction exclude from the definition of employee, for representation purposes, individuals exercising management functions, and individuals employed in a confidential capacity with respect to labour relations.

Separate legislation is often provided for government employees and for other public sector workers such as: firefighters, police, hospital employees and teachers.

Every jurisdiction provides a framework of times within which a union may apply for certification, with the timeliness of the application dependent on whether or not there is currently a bargaining agent, whether an agreement is in force and the length of the agreement in force. Every jurisdiction allows for application for bargaining rights at any time when there is no bargaining agent and no agreement currently in force, but the regulation of applications where these conditions are not met varies greatly.

Certification without a vote is provided in Ontario where the *Labour Relations Board* is satisfied that more than 55 per cent of eligible employees are members of the union. The *Canada Labour Code* provides such certification when the *Canada Labour Relations Board* is satisfied that a majority of those eligible have joined the union.

In all provinces but two, a certain proportion of the proposed bargaining unit must be members of the union at the time of application for a certification vote to be held. This ranges from a low of 35 per cent in the federal jurisdiction and Quebec, to a high of 45 per cent in British Columbia, Manitoba and Ontario.

Majority support of those employees who cast a ballot is required for certification in the federal jurisdiction, Alberta, British Columbia, Manitoba, Ontario, Nova Scotia, New Brunswick, Quebec, and Saskatchewan. In Newfoundland, a majority of the unit being applied for must vote in favour of the union, or at least 70 per cent of the eligible employees must have voted, and the majority of ballots must favour the union.

All jurisdiction make it mandatory for both parties to bargain in good faith. Legislation to impose first contracts is found in Ontario, the federal jurisdiction, Manitoba, Newfoundland, British Columbia and Quebec. Every jurisdiction except Nova Scotia and New Brunswick has a duty of fair representation requirement for unions. In every jurisdiction except Saskatchewan, every collective agreement must provide a means, such as arbitration, to resolve conflicts under the collective agreement without stoppage of work. In Saskatchewan, where an agreement contains an arbitration referral provision, the decision of the arbitrator is final and binding.

No jurisdiction in Canada has enacted right-to-work legislation.

Section 8
PAY EQUITY

THE UNITED STATES

None of the jurisdictions studied in the United States provides for equal pay for work of comparable value. The *Fair Labour Standards Act* prohibits wage differentials based on sex as between men and women employed in the same establishment on jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions. Enforcement is complaint-based, through civil action.

These provisions cover all workplaces in the federal jurisdiction and are administered by the Equal Employment Opportunity Commission. Some states, notably Kentucky, have enacted companion legislation to govern that part of the private sector outside the federal jurisdiction.

JAPAN

The *Equal Opportunity Law* of 1985 prohibits discrimination in the payment of wages and benefits and in the application of mandatory retirement, but it does not include any form of pay equity. The pay equity concept is contradictory, in principle, to the Japanese system of seniority-based wages.

FRANCE

See Act *to amend the Labour and Penal Codes respecting equality in employment between women and men,* 1983.

Employers with 300 or more employees are required to set up job equality plans for female employees and to appoint internal commissions at the level of the enterprise to check on their implementation. Discrimination because of gender is prohibited except for jobs specified by government after consultation with business and labour. Temporary measures in favour of women only are specifically allowed by law.

The French practice has been accepted by the EC as the basis for the equal pay element of "harmonized" employment law within the community.

GREAT BRITAIN

The *Equal Pay Act* covers all establishments in Great Britain, including the armed forces, the police and other public sector employees. It requires equal pay for equal work and for work of equal value as determined by a systematic evaluation scheme.

This complaint-based system has proved expensive and slow for individual complainants. According to a Ministry representative, it is being used quite successfully by unions, particulary in the retail sector.

SWEDEN

The *Act Concerning Equality Between Men and Women at Work*, also called the *Equal Opportunities Act,* guarantees equal pay for comparable work. It addresses discrimination against both sexes in respect of all conditions of work. There are no exclusions.

Compliance is compliant-based, but the process is assisted by unions and by an Equal Opportunities Ombudsman. There is a higher level of appeal to an Equal Opportunities Commission. Voluntary compliance is sought, but may be ordered.

WEST GERMANY

See *Act on the Civil Code*, Section 612(3); 1896 and later amendments.

Under this Act, it is forbidden to discriminate on the grounds of sex in any aspect of employment. Different remuneration for equal or equivalent-value work is forbidden. Where such discrimination is proven, the worker is entitled to compensation. Compliance is complaint-based.

CANADA

All jurisdictions in Canada, including the two Territories, have enacted equal pay legislation of some kind. Four: Manitoba, Nova Scotia, P.E.I. and Yukon, apply different standards to the private and public sectors.

In eight cases, Alberta, British Columbia, Manitoba (private), Newfoundland, Nova Scotia (private), P.E.I. (private), Saskatchewan, Northwest Territories and Yukon (private), the standard is equal pay for work that is substantially the same: equal pay for equal work.

In four cases, Federal, New Brunswick, Quebec and Yukon (public), the standard is equal pay for work of equal value. Compliance, in all these cases, is complaint-based.

Ontario, Manitoba, Nova Scotia and P.E.I. have adopted "pay equity". Pay equity makes it mandatory for employers to apply the principles of equal pay for work of equal or comparable value as defined in the relevant law to their workplaces, usually by means of job evaluation, and make necessary pay adjustments to women workers.

Ontario's Act *to provide for Pay Equity* is the only Canadian pay equity statute which applies to both public and private sectors. This law has been quite controversial. Business groups consider it an unwarranted government intrusion into the marketplace. Labour groups believe that it is overly complex, and fails to effectively penetrate female job ghettos.

Section 9
EMPLOYMENT EQUITY AND HUMAN RIGHTS

All the jurisdictions studied have some form of human rights legislation, and spokespersons for the government involved tend to see their purpose as "employment equity". None outside North America, however, has employment equity programs as they are understood in Canada. The essence of the Canadian approach is concerted action to redress previous discrimination, through employer programs which give preference to disadvantaged groups. In the United States, this is known as "affirmative action".

THE UNITED STATES

The *Civil Rights Act* (Title VII) prohibits discrimination in employment on the basis of race, colour, religion, national origin and sex and applies to any employer in "an industry affecting commerce" who has 15 or more employees. The Act was amended in 1972 to cover federal, state, and local public employers and educational institutions. The *Pregnancy Discrimination Act* of 1978 provides that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes sex discrimination under Title VII.

Age discrimination is prohibited by a separate *Age Discrimination in Employment Act* which, while originally protecting employees between ages 40 and 70, now protects all workers over 40. Congress now requires that employees 65 and older are entitled to the same health plans as younger employees, and under the same terms. Enforcement of the Act is through the *Equal Employment Opportunities Commission* (EEOC) and covers employers with 20 or more employees, public employers, employment agencies and labour organizations with more than 24 members. The EEOC may sue on the employee's behalf, or in some cases, give the employee leave to sue privately.

Employers are encouraged to implement "affirmative action" plans to overcome the effects of past discrimination, but many attempts to use anti-discrimination provisions for this purpose have been overturned by the courts.

The *Americans with Disabilities Act* has been passed by Congress and is expected to become law in 1990. It gives large employers the duty to provide a suitable working environment for the disabled. There are 43 million Americans with disabilities.

None of these laws constitutes employment equity as understood in Ontario, but "affirmative action" plans are required of some corporations doing business with the federal and some state governments. These so called "contract compliance" provisions are, in general, grounded in administrative practice rather than specific enabling legislation. For this reason, they have not been treated in detail in this study.

JAPAN

The *Equal Opportunity Law* prohibits discrimination in employment on the basis of sex. It requires employers to provide equal opportunity to men and women. The law also prohibits discrimination against women in the application of mandatory retirement policies.

Under the *Labour Standards Law*, an employer must not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker.

Employees are encouraged to leave the workforce after attaining age 60 under the 1989 *Law Concerning Stabilization of Employment of Older Persons*. Under employer policies, mandatory retirement as early as age 55, and usually by age 60, is almost universal.

FRANCE

See *Act to amend the Labour and Penal Codes respecting equality in employment between women and men*, 1983; *Act respecting workers' freedoms in the undertaking*, 1982 and later amendments, and *Act to amend various provisions of the Labour Code respecting the employment of foreign workers in an irregular situation and to amend sections L.341-1 et seq. of the Labour Code*, 1981 and later amendments.

The Act on workers' freedom requires employers to draw up written rules of employment in any establishment with 20 or more employees. The rules must prohibit discrimination in all aspects of employment on the grounds of sex, family circumstances, origins, opinions, religious beliefs or handicaps. No employee shall be punished on account of origin, sex, family circumstances, membership of an ethnic group, nation or race, political opinions, trade union or mutual society activities, the normal exercise of the right to strike, or religious convictions.

Retirement age remains in the domain of custom and tradition. Normal retirement is at age 65.

GREAT BRITAIN

See *Equal Pay Act, Sex Discrimination Act* and *Racial Equality Act*.

The law prohibits discrimination against women, men, married persons and pregnant women in respect of employment (including offers of employment), training, promotion, etc. in any establishment. The Act creates an *Equal Opportunity Commission* to oversee the application of this Act and the *Equal Pay Act*.

Discrimination on racial grounds in respect of employment (including offers of employment and job advertisements), training, promotion, etc. is also prohibited. "Race" is defined to include colour, nationality, ethnic origin and national origin.

A *Commission on Racial Equality* is established to provide assistance to victims and to promote the purposes of the Act through research, information and education, investigation, conciliation and the adoption of Codes of Practice.

There is no age discrimination legislation.

SWEDEN

The Ombudsman, under the *Ethnic Discrimination (Prohibition) Act* of 1986, is charged with the duty to counteract ethnic discrimination which is defined as unfair treatment because of: race, colour, national or ethnic origin or religious creed. Collective agreements frequently expand on these provisions.

The law does not enter the area of compulsory retirement. The *Employment Security Act* is deemed to provide protection against mistreatment on any objective grounds.

Employment of disabled or handicapped persons is an objective of the *Labour Market Board,* which trains individuals and provides grants to employers for needed adjustments or accommodations. Regular employment of the handicapped is an objective of Swedish labour market policy.

WEST GERMANY

See *Act on the Civil Code*, Section 612(3), 1896 and later amendments; *Basic Law of the Federal Republic of Germany,* 1949; and *Works Constitution Act*, 1972 and later amendments.

The Civil Code and Basic law both prohibit discrimination in employment on the grounds of sex, parentage, race, language, homeland, origin, faith, religious or political opinions. Compliance is complaint-based.

Ages is not included among prohibited reasons for discrimination. This matter is in the domain of custom in Germany. However, a *Pension Reform Act* being drafted for effect in 1992, proposes worker choices on work beyond the normal retirement age of 65.

The *Protection Against Dismissal Act* also requires measures to avoid dismissal, which protects disabled employees. In addition, the *Act on Handicapped Persons* prohibits a handicapped worker's dismissal without permission of the agency which administers the Act. Works councils are required to work with the employer towards the better integration of handicapped workers into the workforce.

CANADA

All Canadian jurisdictions prohibit discrimination in employment on the grounds of colour, marital status, race, religion or creed, sex, age (definitions vary) and physical disability.

Three jurisdictions (Manitoba, Quebec and New Brunswick) have provided outright bans on mandatory retirement with limited exemptions. (New Brunswick, for example, has banned mandatory retirement only where the employee is not covered by a pension or retirement plan, although there are no minimum standards for such a plan).

In five jurisdictions (federal, Alberta, P.E.I., Yukon and the Northwest Territories), age is a prohibited grounds of discrimination, with no upward limit on the definition of age, and this, in effect, operates as a restriction on mandatory retirement practices. The remaining jurisdictions (British Columbia, Nova Scotia, Newfoundland, Ontario and Saskatchewan) all limit their protection from employment discrimination to individuals under the age of sixty-five, effectively permitting mandatory retirement.

Section 15W of the *Charter* guarantees every individual the equal protection and benefit of the law without discrimination on the basis of age. However, the Supreme Court of Canada has held that mandatory retirement provisions, while violating section 15(1), are justifiable and constitutionally valid under section 1 of the Charter [McKinney v. University of Guelph, December, 1990].

Nine jurisdictions (Alberta, B.C., Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, P.E.I. and Saskatchewan) have provisions which state that the prohibition against age discrimination does not apply to the operation of a bona fide retirement or pension plan. However, these provisions generally allow for distinctions to be drawn in benefits only, and do not extend to allow discrimination in the determination of the date of retirement itself. It appears that at least in those provinces where no upward limitation on the definition of age exists, a distinction can be drawn as to the actual date of retirement as long as the provision does not limit the distinctions to benefits only.

In addition, the *Human Rights Codes*, or equivalent laws, in all jurisdictions give government authorities the right to approve, and in some cases, order the creation of special workplace affirmative action programs whose aim is the improvement of the workplace conditions of disadvantaged individuals or groups.

The federal *Employment Equity Act* requires all employers in the federal jurisdiction with 100 or more employees to "take positive steps to ensure that designated groups receive a proportionate degree of representation". For this purpose, employers are required to file reports with the Minister of Employment and Immigration which show the number of persons from designated groups who are employed, the positions held, salaries, hirings, promotions and terminations.

The *Ontario Human Rights Code* provides entitlement to equal treatment in employment to all persons regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

Section 10
CONTRACTING OUT

THE UNITED STATES

There are no statutory provisions which regulate the practice of contracting out of work. The provisions of the *National Labour Relations Act* govern union status in cases of sale or transfer of an employer's business.

Contracting out and successor rights are sometimes the subject of provisions in collective agreements, and government contract compliance regulations.

JAPAN

Contracting out and related matters are not addressed by Japanese law.

FRANCE

French law does not address contracting out. The law does, however, make the purchaser of a business, or a significant part thereof, subject to any collective agreements currently in force. Accumulated employee rights are also guaranteed. Laws which protect employment status, discussed under "Employment Standards", also have a bearing on employee rights in such circumstances.

GREAT BRITAIN

There is no legislated standard.

In recent years, the government has moved to prohibit the use, by local authorities and public agencies, of "contact compliance" standards for companies doing business with government. These agencies are also required to carry out competitive bidding for performance of many functions previously performed by public employees.

SWEDEN

Under the *Co-Determination Act*, the employer is obliged to negotiate with the union prior to any contracting out of work. The union may veto any such step and, where it accepts the need for the contract, has the power to oversee the work and the practices of the contractor and employer in relation to such work.

WEST GERMANY

See *Works Constitution Act*; *Protection Against Dismissal Act*, and *Act on the Civil Code*, Section 613(a).

The first two cited Acts contain provisions which require the employer not only to justify dismissals, but to provide advance notification of business plans which could lead to dismissals. Disputes may be decided by an internal conciliation committee which has an impartial chairperson.

Where sale or transfer of the business is involved, employees continue to be entitled to all benefits under the old collective agreement (or employment arrangement) which is inherited by the new employer together with all accumulated employee rights.

CANADA

The labour relations Acts of all jurisdictions contain provisions which govern maintenance of union bargaining rights and employee rights in sale or transfer situations.

Additionally, Nova Scotia provides that the Labour Relations Board may treat a case of contracting out of work the same as a sale or transfer of business, where it deems the employer is attempting to escape union representation or avoid obligations under a collective agreement.

Section 11
SUNDAY WORK

THE UNITED STATES

Neither the federal government nor the states have legislated in the area of Sunday work. There are many locally determined so-called "blue laws" which govern the operations of commercial and other enterprises on Sunday, but these have no direct significance for labour standards.

JAPAN

There is no Sunday closing law, but most non-service businesses cease operation on Sunday.

FRANCE

See *Act to provide for weekly rest for salaried employees and wage earners,* 1906.

No given employee may be employed for more than six days per week. The weekly rest must last for at least 24 consecutive hours and must be granted, unless the business has been exempted, on Sundays.

GREAT BRITAIN

There is no legislated standard. There are Sunday closing laws in respect of commercial establishments, but no specific protection for workers.

SWEDEN

The *Working Hours Act* requires at least 36 consecutive hours rest in every seven days. Collective agreements treat Sundays as a day off, subject to negotiated premium payments when worked. There is no legislated restriction on Sunday work.

WEST GERMANY

See *Basic Law of the Federal Republic*, Section 140; the *Trade Act*, and the *Industrial Code* of 1891, which has undergone amendment but remains fundamentally unchanged in this respect.

Sunday rest is mandatory for all workers over age 18. There are the usual exceptions for emergency workers and for those in restaurants, hotels, etc.

According to a Ministry official, Germany is noted within the European Community for the rigour of its Sunday rest protection.

CANADA

In Ontario, the *One Day's Rest in Seven Act* provides for 24 consecutive hours of rest in every seven days for employees of hotels, restaurants and similar establishments in cities and towns whose populations exceed 10,000. Certain types of occupations may be excepted. Schedules under the *Industrial Standards Act* specify the days and rest periods during which employees in particular industries may not be required to work.

The federal *Lord's Day Act* governs Sunday closing on the basis of religious observances. It is a criminal code law and beyond the jurisdiction of the provinces.

The provinces, however, are not constitutionally impaired from legislating in this area for purposes of employment standards. This explains the origins of the *One Day's Rest in Seven Act,* but the Ontario Act and five other provincial counterparts specify that, wherever possible, the day of rest shall be a Sunday.

Ontario, and several other provinces, have laws regulating the opening of retail stores on Sundays. These, however, are not generally considered labour standards, since they focus on retail sales, and do not regulate work by employees (who in some cases work on Sundays even though the store may be closed). The Ontario store closing law has been challenged in the courts, but the outcome will not affect the *One Day's Rest in Seven Act*.

APPENDIX

INTERJURISDICTIONAL LABOUR STANDARDS STUDY

GUIDE TO THE DATABASE

GUIDE TO THE DATABASE: A USER'S MANUAL

The structure of the database is outlined below, including the key standards from the terms of reference, the variable names, the type of variables used to store the data, and a brief description of the information contained in each variable. Occasionally, variables were added to expand on the information provided for specific jurisdictions. Where this was done, the jurisdiction to which the variable applies is provided in the variable description. As well, it was necessary in some cases to change the type of variable used in order to more accurately describe the standard in a particular jurisdiction. These changes are indicated in footnotes at the end of the database guide.

I. Employment Standards

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
None	JURISDIC	Character	The jurisdiction to which this portion of the database applies
None	ANNOTE	Memo	Complete index of legislation, legal citations, and interview annotations, where available
Minimum Wage	MINWAGE	Numeric	The general minimum wage rate, measured in the currency of the jurisdiction (1)
	CANADA	Numeric	The general minimum wage converted to Canadian dollars
Hours of Work	MAXDHR	Numeric	The maximum number of hours a worker may work in a day (2)

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	MAXMHR	Numeric	The maximum number of hours a worker may work per week (3)
	MAXMHR	Memo	The maximum number of hours a worker may work in a month (Applicable to Japan only)
	REFUSE	Logical	Whether an employee has the right to refuse overtime after working max. allowed hours (4)
	EXEMPT	Memo	Those industries & occupations exempt from hours of work legislation
	TRIGGER	Character	Number of hours in day/week after which premium rates must be paid
	TRIGGER2	Character	Number of hours in given time frame after which premium rates must be paid (Applies to British Columbia and Newfoundland only)
OVERTIME PAY	OVERRATE	Character	The statutory overtime premium rate, expressed as a multiple of the employee's regular rate (5)
	OVERRATE2	Character	The statutory overtime premium rate, expressed as a multiple of the employee's regular rate (applies to British Columbia)

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
Vacation with Pay	VACATION1 TO VACATION5	Character	The number of years of service required to receive each week of paid annual vacation, with each variable representing one week of vacation
	VACATION6	Character	Same as above (applies to France only)
	VACATION	Memo	The annual vacation received by an employee (applies to North Carolina and Germany only)
Public Holidays	STATHOL	Numeric	The number of paid statutory holidays per year (6)
Pregnancy Leave	PREGLEAVE	Numeric	The number of weeks of maternity leave the employee is entitled to (7)
	PREGWEEKS	Numeric	The number of weeks of service the employee must have with employer to be entitled to maternity leave (8)
	COVERAGE	Character	Whether both, either or only one parent is eligible to use the parental leave entitlements
	ADOPTION	Logical	Whether or not adoption leave is available (9)
	CHILDCARE	Logical	Whether or not child care or family care leave is available.

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
Notice of Termination	INDTERM1 TO INDTERM8	Character	The number of years of service which entitles the worker to each week of notification, with each variable representing one week of notice
	INDTERM	Memo	The notification requirements for terminating an individual (applies to Sweden, United Kingdom and Germany only)
	GROUP1TOTL TO GROUP3TOTL	Character	The total number of employees terminated to whom notification must be given. Three different totals are accommodated
	GROUP1WK TO GROUP3WK	Character	The total number of weeks of notification required. Corresponds to each group of employees terminated
	GROUPNOTE	Memo	Miscellaneous information about notification requirements for termination
	GOVLAYOFF	Logical	Whether the government must be notified of a mass layoff
	GOVFULL	Logical	Whether the government must be notified of a full plant closure

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	GOVPARTIAL	Logical	Whether the government must be notified of a partial plant closure
	NOTICE	Memo	If notification is required in any of the above three situations, how and when the government must be notified
Severance Pay	SEVERANCE	Memo	The conditions under which the employer is required to pay severance pay to an employee
	AMTSEV	Memo	The amount of severance pay required when the above conditions are met
Unjust Dismissal	DAMAGES	Logical	Whether there are provisions allowing a non-unionized employee to seek damages for unjust dismissal (10)
	REINSTATE	Logical	Whether there are provisions allowing a non-unionized employee to seek reinstatement for unjust dismissal (11)
Wage Protection	BANKRUPT	Logical	Whether there are provisions providing a claim for unpaid wages against the assets of a bankrupt firm (12)

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	RECEIVER	Logical	Whether there are provisions providing a claim for unpaid wages against the assets of a firm in receivership
II. OCCUPATIONAL HEALTH AND SAFETY			
Major Stakeholders	STAKEHOLD	Memo	The legislated duties and responsibilities of the major stakeholder as they are defined in the Act
Joint Health and Safety Committees and/or Representatives	HSCOM	Logical	Whether joint H & S committees and/or representatives are provided for
	MANDATORY	Logical	Whether the above are mandatory (13)
	HSDUTIES	Memo	The duties and responsibilities of the H & S committees and/or representatives
	INSPECTOR	Logical	Whether the Act requires a worker-inspector to do a routine inspection of the workplace
Right to Refuse/Stop Work	RIGHTREF	Logical	Whether a worker has the right to refrain from his/her own work if he/she feels his/her health and/or safety are in danger

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	RESOLUTION	Memo	The process by which the worker and employer resolve the situation leading to a refusal to work
	STOPWORK	Logical	Whether an authority to stop work (other than one's own) exists if the health/safety of workers is in danger
	AUTHORITY	Memo	Where the authority to stop work exists whether it is exercised by a worker rep., an employer rep. or jointly
	RESSTOP	Memo	The resolution process in a situation where an authorized work stoppage has occurred
Worker Training	TRAINING	Memo	The requirements for training workers in the area of occupational health and safety.
Employee Right to Know Legislation	RIGHTKNOWN	Logical	Whether the Act contains provisions pertaining to workers' right to know about materials with which they work
	RIGHTKNOWE	Logical	Same as above, with respect to equipment
	RIGHTKNOWP	Logical	Same, with respect to work processes

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	RIGHTKNOW	Memo	Miscellaneous information about workers' right to know legislation (applies to Prince Edward Island and Saskatchewan only)
Health and Safety Agency	AGTRAIN	Logical	Whether the Act provides for a legislated agency to provide OH & S training
	AGCERT	Logical	Same, with a certification function
	AGCONS	Logical	Same, with a consultation function
	AGRES	Logical	Same, with a research function
	AGENCY	Character	If the agency described above is legislated, whether the structure is bipartite, tripartite or other (14)
Consultation for Regulatory Development	CONSULT	Memo	The process by which consultation occurs in the development of OH & S regulations (if any occurs)
Coverage	COVERFARM	Logical	Whether farming operations are covered by the OH & S legislation
	COVERHOME	Logical	Whether private residences are covered by the OH & S legislation
	COVERTEACH	Logical	Whether teachers are covered by the OH & S legislation

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
Appeal Mechanism	APPEALS	Memo	The appeal mechanism used for reconsideration of an inspector's orders
Fines and Penalties	PENALTY	Character	The maximum penalties/fines measured in the currency of the jurisdiction, for contravention of the legislation (15)
	LEVYBODY	Character	The legislated body (courts or special tribunals) responsible for levying penalties/fines (16)
	BODYFINED	Memo	To whom in the organisation which has contravened the legislation the penalty/fine is levied against; also, whether individual workers or a union can be penalized
III. **Workers' Compensation**			
None	WORKCOMP	Memo	A description of the workers' compensation system (applies to Germany only)
Financing	FINANCING	Character	The party/parties responsible for paying for the costs of the system
	PRIVATE	Logical	Whether the parties can obtain private insurance to meet their workers' compensation obligations
Coverage	EXCLUSIONS	Memo	Those industrial sectors and/or occupations which are excluded from coverage by the legislation

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
Income Replacement Levels	REPLACEPER	Memo	The income replacement level for an individual with a permanent partial or total disability (usually a percentage of pre-injury income)
	REPLACETEM	Memo	The income replacement level for an individual with a temporary partial or total disability (usually a percentage of pre-injury income)
	REPLACESUR	Memo	The income replacement benefits paid to the survivors of fatally injured worker (percentage of pre-injury income, or flat rate benefit)
Appeal Mechanism/ Access to Courts	APPEAL	Memo	The process available for appealing denied claims
	CIVIL	Logical	Whether the Act allows workers to seek civil damages in suits against third parties for negligence
Rehabilitation & Re-employment	RETURN	Logical	Whether the worker has the right to return to their pre-injury job or a suitable job (17)
	REHAB	Memo	Whether there is an automatic entitlement to rehabilitation, and whether spouses of fatally injured workers are entitled to rehab services (18)
	REHABTYPE	Memo	The type(s) of rehabilitation services provided.

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
IV. **Labour Relations**			
Right to Collective Bargaining	EXCLUSION	Memo	Those occupations or groups excluded from collective bargaining
Certification Process	CERTIFY	Memo	The process by which a union gains bargaining rights
	GOVVOTE	Memo	The conditions and procedures by which a government-supervised vote is held
	MAJORITY	Memo	Whether it is mandatory that an interest in union representation be demonstrated by a majority
	RIGHTWORK	Logical	Whether the right to work has been legislated (i.e. the prohibition of compulsory dues payment)
Bargaining Process	GOODFAITH	Logical	Whether there is a legislated duty for the parties to bargain in good faith (19)
	FIRSTCON	Logical	Whether the government provides for arbitration when negotiation of a first contract reaches impasse (first contract arbitration)

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
Right to Strike	NOSTRIKE	Logical	Whether certain groups have the legislated right to bargain but are prohibited from striking (20)
	ESSENTIAL	Logical	Whether certain services are designated as essential and prohibited from striking (21)
	CONTNOSTR	Memo	The process for establishing contracts where striking is prohibited
Duty of Fair Representation	FAIRREP	Memo	The duties and obligations of the union to its members with respect to representation
Disputes Resolution	DISPUTES	Memo	The legislated mechanism for resolving disputes under the collective agreement
V. **Other Issues**			
Pay Equity	PAYEQUITY	Logical	Whether legislation exists guaranteeing equal pay for work of comparable value (22)
	COVERPAY	Memo	Those individuals and/or groups that are covered by the legislation
Employment Equity	EMPEQUITY	Logical	Whether there is employment equity legislation or a program in effect (23)
	TARGETS	Memo	Those groups that are covered by the legislation or program
	COMPLIANCE	Character	Whether the basis for complying with the legislation or program is voluntary, mandatory or based on procurement of government contracts (24)

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	NATURE	Memo	The means by which equity is achieved ie. goals or quotas
Human Rights	MANDRETIRE	Logical	Whether there is any restriction or prohibition of mandatory retirement practices (25)
	ACCOMOD	Memo	The legislated requirement or duty of the employer to accommodate the handicaps of employees
Contracting Out	RESTRICT	Logical	Whether there are restrictions on the right to contract out work previously done by employees (26)
	UNIONPRO	Memo	The protections offered to unionized employees whose work has been contracted out/re-tendered
	NOUNIONPRO	Memo	The protections offered to non-unionized employees whose work has been contracted out/re-tendered
	PREMISES	Logical	Whether it is relevant if the work is carried out on the employers' premises or elsewhere
	SALE_TRANS	Memo	The definition of the sale or transfer of a business
	GOVCON	Logical	Whether the same rules with respect to contracting out apply to government as well as the private sector
	UNIONRIGHT	Memo	The rights of the trade union whose members are affected by contracting out/re-tendering

STANDARD	VARIABLE NAME	VARIABLE TYPE	VARIABLE DESCRIPTION
	SUCESSOR	Logical	Whether the union maintains its bargaining rights with respect to the work contracted out/re-tendered
	COLLAGR	Logical	Whether the existing collective agreement is binding on the new employer or contractor
Sunday Work	SUNDAY	Memo	The restrictions or protections surrounding Sunday work

FOOTNOTES

1. MINWAGE was changed to a memo variable for Illinois and Indiana, and a character variable for Japan, Sweden and the United Kingdom.

2. MAXDHR was changed to a character variable for the United Kingdom.

3. MAXWHR was changed to a character variable for the United Kingdom.

4. REFUSE was changed to a character variable for Sweden.

5. OVERRATE was changed to a memo variable for California.

6. STATHOL was changed to a character variable for Sweden, and a memo variable for Georgia, Indiana, Kentucky, Michigan, Ohio, New York, Pennsylvania and Tennessee.

7. PREGLEAVE was changed to a memo variable for California, the U.S. federal jurisdiction, Georgia, Kentucky, Michigan, New York, Ohio, Tennessee and Sweden.

8. PREGWEEKS was changed to a character variable for Sweden, the United Kingdom and Massachussetts.

9. ADOPTION was changed to a character variable for Alberta.

10 DAMAGES was changed to a memo variable for Nova Scotia.

11. REINSTATE was changed to a memo variable for Nova Scotia.

12. BANKRUPT was changed to a memo variable for Michigan an Pennsylvania.

13. MANDATORY was changed to a character variable for Alberta.

14. AGENCY was changed to a memo variable for Tennessee.

15. PENALTY was changed to a memo variable for Michigan, Quebec, the United Kingdom, the Canadian federal jurisdiction, France, Tennessee, the U.S. federal jurisdiction, Germany, Sweden, Japan and Kentucky.

16. LEVYBODY was changed to a memo variable for Indiana, Kentucky and Michigan.

17. RETURN was changed to a memo variable for Georgia.

18. REHAB was changed to a logical variable for Indiana, Ohio, Michigan, Kentucky and Pennsylvania.

19. GOODFAITH was changed to a memo variable for Japan.

20. NOSTRIKE was changed to a character variable for Alberta.

21. ESSENTIAL was changed to a character variable for New Brunswick and Prince Edward Island, and a memo variable for Alberta and Quebec.

22. PAYEQUITY was changed to a memo variable for Japan and Tennessee.

23. EMPEQUITY was changed to a memo variable for Japan, Pennsylvania and Tennessee.

24. COMPLIANCE was changed to a memo variable for Kentucky.

25. MANDRETIRE was changed to memo variable for France, Japan and Tennessee.

26. RESTRICT was changed to a memo variable for Michigan.